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INTERSTATE COMMERCE COMMISSION

LIVINGSTON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

GENESEE AND WYOMING RAILROAD COMPANY

CHEMICAL BANK

BOND PURCHASE AGREEMENT

Dated as of January 1, 1981

9.75% 1981 INDUSTRIAL DEVELOPMENT REVENUE BONDS
(Genesee and Wyoming Railroad Company Facility)
Due 1996

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Issuer

BOND PURCHASE AGREEMENT

9.75% 1981 INDUSTRIAL DEVELOPMENT
REVENUE BONDS

(Genesee and Wyoming Railroad Company Facility)
Due 1996

THIS BOND PURCHASE AGREEMENT dated as of January 1, 1981 by and among the LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a governmental agency and instrumentality of the State of New York (herein called the "Issuer"), GENESEE AND WYOMING RAILROAD COMPANY, a New York corporation (herein called the "Company"), and CHEMICAL BANK (herein called the "Purchaser").

SECTION 1. PURCHASE AND SALE OF BONDS

1.1 Issue of Bonds. The Issuer will authorize the issuance of \$1,000,000 in aggregate principal amount of its 9.75% 1981 Industrial Development Revenue Bonds (Genesee and Wyoming Railroad Company Facility) (herein called the "Bonds") to be issued under a bond resolution duly adopted by the Issuer (herein called the "Resolution") and this Agreement and to be secured by (1) a Security Agreement dated as of the date hereof between the Issuer and the Purchaser, which shall be in the form of Exhibit A to this Agreement (herein called the "Security Agreement") and which provides, among other things, for (i) the grant by the Issuer to the Purchaser and its successors and assigns of a first Lien on each of two (2) General Motors EMD MP15DC diesel locomotives (herein together called the "Project") to be purchased with the proceeds of the Bonds and to be operated by the Company substantially within Livingston County, New York and (ii) the acceptance by the Company of the obligations of the Issuer set forth in the Security Agreement pursuant to an Acceptance dated as of the date hereof (herein called the "Acceptance") and (2) a pledge and assignment dated as of the date hereof by the Issuer to the Purchaser, which shall be in the form of Exhibit B to this Agreement (herein called the "Assignment") and which provides among other things for the pledge and assignment by the Issuer to the Purchaser and its successors and assigns of certain moneys due and becoming due to the

Issuer under a Lease Agreement dated as of the date hereof between the Issuer and the Company, which shall be in the form of Exhibit C to this Agreement (herein called the "Lease"), and the assignment by the Issuer to the Purchaser and its successors and assigns of certain other of its rights under the Lease. The Bonds will be entitled to the benefits of a Guaranty and Indemnification Agreement dated as of the date hereof among Genesee and Wyoming Industries, Inc., a Delaware corporation and the owner of 100% of the outstanding capital stock of the Company (herein called "GWI"), the Company and the Purchaser, which shall be in the form of Exhibit D to this Agreement (herein called the "Guaranty").

1.2 The Closing. The Issuer hereby agrees to sell to the Purchaser and the Purchaser hereby agrees to purchase from the Issuer, in accordance with the provisions of this Agreement, the entire aggregate principal amount of the Bonds at 100% of the principal amount thereof. The closing of the purchase of the Bonds (herein called the "Closing") shall be at 10:00 A.M. New York City time, on January 27, 1981 (herein called the "Closing Date"), at the offices of Messrs. Willkie Farr & Gallagher, 153 East 53rd Street, New York, New York. At the Closing, the Issuer will deliver to the Purchaser a fully registered Bond without coupons in the principal amount of \$1,000,000, registered in the name of the Purchaser, dated the Closing Date, against payment therefor by certified or official bank check, in immediately available funds, payable to the Issuer, or by such other means as may be agreed upon by the Purchaser, the Company and the Issuer.

1.3 Failure to Deliver. If at the Closing the Issuer fails to tender to the Purchaser the Bonds to be purchased by it or if the conditions specified in Section 7 have not been fulfilled, the Purchaser may thereupon elect to be relieved of all further obligations under this Agreement. Nothing in this Section 1.3 shall operate to relieve the Issuer or the Company from any of its obligations hereunder or to waive any of the Purchaser's rights against the Issuer or the Company.

1.4 Expenses. Whether or not the Bonds are sold, the Company will cause to be paid all expenses relating to this Agreement, including but not limited to:

- (a) the cost of printing, engraving or otherwise preparing the Bonds and the cost of reproducing this

Agreement, the Security Agreement, the Assignment, the Lease and the Guaranty;

(b) the reasonable fees and disbursements of Messrs. White & Case, special counsel for the Purchaser, Raymond L. Sciarrino, Esq., counsel for the Issuer, and Messrs. Willkie Farr & Gallagher, bond counsel;

(c) the reasonable out-of-pocket expenses of the Purchaser;

(d) the cost of delivering to the Purchaser's home office, or to such other address as it may designate, insured to its satisfaction, the Bond purchased by it on the Closing Date; and

(e) all expenses relating to any amendments, waivers or consents pursuant to the provisions hereof or of any other agreement referred to herein.

The obligations of the Company under this Section 1.4 shall survive the payment or prepayment of the Bonds, the termination of this Agreement and the discharge of the Liens of the Security Agreement and the Assignment.

1.5 Purchase for Investment. The Purchaser represents to the Company and the Issuer that it is purchasing the Bonds for its own account for investment and with no present intention of distributing or reselling the Bonds or any part thereof, but without prejudice, however, to its right at all times to sell or otherwise dispose of all or any part of the Bonds pursuant to applicable law.

SECTION 2. FORM, REGISTRATION, TRANSFER AND EXCHANGE OF THE BONDS.

2.1 Form of the Bonds; Exchange of Bonds. (a) The Bonds shall be issued as fully registered Bonds without coupons in typewritten form, shall be in the denominations and shall be dated and numbered as provided in paragraph (b) of this Section 2.1 and shall be in the form of Exhibit E to this Agreement with such appropriate variations, omissions and insertions as are permitted or required by this Agreement.

(b) The Bonds shall be issued initially in the form of a single fully registered Bond without coupons, which shall

be in the denomination of \$1,000,000, dated the Closing Date and numbered R-1 and which may be exchanged or transferred only in accordance with the provisions of this Agreement. The initial Bond, and any subsequently issued Bond, may be exchanged for a single new Bond, which (i) shall be issued in a denomination equal to the principal amount of the Bonds at the time outstanding, (ii) shall be dated as of the date three months preceding the Bond Payment Date that next follows the date on which the Bond exchanged was surrendered to the Issuer and (iii) shall be numbered the next consecutive number following the number of the Bond so surrendered. The term "Bonds" as used herein shall mean the initial Bond delivered to the Purchaser pursuant to this Agreement and each subsequent Bond issued and delivered in exchange or substitution for such Bond or such subsequent Bond pursuant to this Agreement.

2.2 Interest Rate. The Bonds shall bear interest at the rate of nine and three-quarters per centum (9.75%) per annum, payable quarterly on the first day of January, April, July and October of each year, commencing April 1, 1981, provided that upon the occurrence of an Event of Taxability, the Bonds shall bear interest from the date of the occurrence of such Event of Taxability until paid in full at the rate of nineteen and one-half per centum (19.50%) per annum. Interest shall be computed on the basis of a 360-day year and the actual number of days elapsed.

2.3 Registration and Transfer of Bonds. (a) All Bonds issued under this Agreement shall be negotiable, subject to the provisions for registration of transfer contained herein and in the Bonds.

(b) So long as any Bond shall remain outstanding, the Issuer shall maintain at its office books for the registration of transfer of Bonds. The Issuer shall register in such books and permit to be transferred thereon, under such reasonable regulations as it may prescribe, any Bond entitled to registration of transfer.

(c) Each Bond shall be transferable only on the books of the Issuer, upon surrender thereof at the office of the Issuer, together with a written instrument of transfer satisfactory to the Issuer duly executed by the registered owner or its attorney duly authorized in writing. Upon the transfer of any such Bond the Issuer shall cancel and destroy the Bond surrendered and issue in the name of the

transferee a single new registered Bond without coupons of the same maturity and rate of interest as the surrendered Bond, dated and numbered as provided in Section 2.1(b), and in a principal amount equal to the principal amount of the Bonds at the time outstanding.

(d) In all cases in which the privilege of exchanging or transferring Bonds is exercised, the Issuer shall execute and deliver Bonds in accordance with the provisions of this Agreement. For every exchange or transfer of Bonds, the Issuer may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer.

(e) The Issuer shall not be obligated to exchange or transfer any Bond during the ten (10) days next preceding (i) a Bond Payment Date or (ii) in the case of any proposed redemption or partial prepayment of Bonds, the date of notice of such redemption or partial prepayment.

(f) Notwithstanding anything contained in this Agreement to the contrary, interest on any Bond due on any Bond Payment Date shall be payable to the Person or Persons in whose name such Bond is registered as of the close of business on the Record Date with respect to such Bond Payment Date, irrespective of any transfer or exchange of such Bond subsequent to such Record Date and prior to such Bond Payment Date, unless the Issuer shall default in the payment of interest due on such Bond Payment Date. In the event of any such default, such defaulted interest shall be payable to the Person or Persons in whose name such Bond is registered as of the close of business on a special record date for the payment of such defaulted interest established by notice mailed, not less than fifteen (15) days preceding such special record date, by or on behalf of the Issuer to the Person or Persons in whose name the Bond is registered as of the close of business on the fifth day preceding the date of mailing. Payment of interest on the Bonds, at the option of the Issuer, may be made by check mailed to the registered address of the Person entitled thereto.

2.4 Mutilated, Lost, Stolen or Destroyed Bonds. (a) In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer may execute and deliver a new Bond of like maturity, interest rate and principal amount and bearing the same number as the mutilated, destroyed, lost or stolen Bond, in exchange for the mutilated Bond or in substitution for the Bond so destroyed, lost or stolen. In

every case of exchange or substitution, the applicant shall furnish to the Issuer (i) such security or indemnity as may be required by the Issuer to save it harmless from all risks, however remote, except in the event that the applicant is a financial institution, in which case its own written agreement of indemnity shall be deemed to be satisfactory indemnity as required by this Section 2.4 and (ii) evidence to the satisfaction of the Issuer of the mutilation, destruction, loss or theft of the applicant's Bond and of the ownership thereof. Upon the issuance of any Bond upon such exchange or substitution, the Issuer may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses, including counsel fees, of the Issuer. In case any Bond which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Issuer may, instead of issuing a Bond in exchange or substitution therefor, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Bond) if the applicant for such payment shall furnish to the Issuer such security or indemnity as it may require to save it harmless and evidence to the satisfaction of the Issuer of the mutilation, destruction, loss or theft of such Bond and of the ownership thereof.

(b) Every Bond issued pursuant to the provisions of this Section 2.4 shall constitute an additional contractual obligation of the Issuer (whether or not the destroyed, lost or stolen Bond shall be found at any time to be enforceable) and shall be entitled to all the benefits of this Agreement, the Security Agreement, the Assignment and the Guaranty equally and proportionately with any and all other Bonds duly issued hereunder and under the Resolution.

(c) All Bonds shall be held and owned upon the express condition that the provisions of this Section 2.4 are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Bonds and shall preclude all other rights or remedies, notwithstanding any law or statute existing or hereinafter enacted to the contrary.

SECTION 3. BOND PROCEEDS AND APPLICATION THEREOF.

The Issuer shall disburse the proceeds from the sale of the Bonds by endorsement of the Purchaser's instrument of

payment for the bonds over to the Company without recourse or by delivery of federal or other funds current and available in New York City on the Closing date to the Company upon (i) receipt of a written requisition therefor from the Company, in form satisfactory to the Issuer and bond counsel and with such supporting documentation as the Issuer and bond counsel may reasonably require, certified to by an Authorized Representative of the Company, stating: (A) the name of the Person to whom payment is to be made; (B) the amount of the payment; and (C) that the disbursement is to be applied to a cost of the Project; and (ii) receipt of a certificate signed by an Authorized Representative and the chief financial officer of the Company certifying (A) that at least 90% of the disbursement will be expended for reimbursement to the Company for "property of a character subject to the allowance for depreciation" within the meaning of Section 103(b)(6)(A) of the Code and (B) that the disbursement will be used only to pay the costs of the Project.

SECTION 4. REPAYMENT BY THE ISSUER.

4.1 Redemption of Bonds Before Maturity. (a) The Bonds shall be redeemed prior to their maturity by payment of mandatory Sinking Fund Installments in the amount of \$16,667.00 each, payable on the first day of April, 1981 and on the first day of each July, October, January and April thereafter to and including October 1, 1995 with a final installment in the amount of \$16,647.00 payable on January 1, 1996. Such Sinking Fund Installments shall be payable at a Redemption Price of 100% of the principal amount to be so redeemed, together with accrued interest to the redemption date. Any principal amount of the Bonds redeemed pursuant to paragraph (b), paragraph (c) or paragraph (f) of this Section 4.1 shall be applied to reduce the Sinking Fund Installments in inverse chronological order of their due dates.

(b) The Bonds are redeemable prior to maturity beginning on or after January 1, 1986 at the option of the Issuer, which option will be exercised only at the direction of the Company, as a whole at any time (upon compliance with the requirements set forth in Sections 11.1(b) and 11.2 of the Lease) or in part on any Bond Payment Date (upon payment by the Company of additional sums pursuant to Section 5.5 of the Lease), at the following Redemption Prices expressed in

percentages of the principal amount to be so redeemed, together with interest accrued on such principal amount to the redemption date thereof:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
January 1, 1986 through December 31, 1986	109.75 %
January 1, 1987 through December 31, 1987	108.775%
January 1, 1988 through December 31, 1988	107.8 %
January 1, 1989 through December 31, 1989	106.825%
January 1, 1990 through December 31, 1990	105.85 %
January 1, 1991 through December 31, 1991	104.875%
January 1, 1992 through December 31, 1992	103.9 %
January 1, 1993 through December 31, 1993	102.925%
January 1, 1994 through December 31, 1994	101.95 %
January 1, 1995 through December 31, 1995	100.975%

(c) On any Bond Payment Date, at the direction of the Company and upon payment by the Company of additional sums pursuant to Section 5.5 of the Lease, the Issuer may redeem an additional principal amount of the Bonds equal to the Sinking Fund Installment due on such Bond Payment Date (or any lesser amount in an even multiple of \$50,000) at a Redemption Price equal to the principal amount so redeemed plus accrued interest on such amount to such Bond Payment Date; provided that the aggregate principal amount of the Bonds which may be redeemed pursuant to this Section 4.1(c) shall not exceed \$200,000. Such optional redemption rights shall not be cumulative, and all or any part of such redemption option not exercised as to any particular Bond Payment Date shall thereupon cease and lapse and be of no further force or effect.

(d) Upon the occurrence of an Event of Taxability, the Bonds shall be subject to redemption as a whole, not more than ninety (90) days after receipt by the Company of notice of the occurrence of the Event of Taxability, at the option of the Issuer, which option shall be exercised only at the direction of the Company, at the Redemption Price of 100% of the unpaid principal balance of the Bonds, plus interest accrued to the date of redemption, and the Company shall be obligated to pay any amounts then due pursuant to Section 8.5.

(e) In the event of exercise by the Company of its option to terminate the Lease as provided in Section 11.1(a) thereof at any time prior to maturity, the Bonds shall be redeemed by the Issuer as a whole at 100% of the unpaid

principal amount thereof plus interest accrued to the redemption date.

(f) On the Bond Payment Date that next follows such payment, the balance of any amount received by the Bondholder pursuant to Section 7.1(a) or 7.2(a) of the Lease remaining after payment of the costs of replacement, repair, rebuilding, restoration or acquisition, as provided therein, and, on the Payment Date that next follows the date of receipt thereof, any amount received by the Bondholder pursuant to Section 9.2(a)(2)(b) or 7.1(b)(2)(z) of the Lease shall be applied pro tanto to the prepayment of the principal amount of the Bonds which remains outstanding after application of (i) the Sinking Fund Installment due on such Bond Payment Date and (ii) any partial redemption made pursuant to paragraph (b) or paragraph (c) of this Section 4.1 on such Bond Payment Date. All payments made pursuant to this Section 4.1(f) shall be valid and effectual to discharge the liability of the Issuer with respect to such payments.

4.2 Notice of Redemption. When Bonds are to be redeemed pursuant to Section 4.1 (except pursuant to paragraph (a) or (f) thereof), the Issuer shall give notice of the redemption of the Bonds stating: (i) the principal amount of the Bonds to be redeemed; (ii) the redemption date; (iii) that on the redemption date there shall become due and payable the Redemption Price, together with interest accrued to the redemption date; and (iv) that from and after the redemption date interest thereon shall cease to accrue. Notice shall be given in writing by mail, postage prepaid, not less than thirty (30) nor more than forty-five (45) days prior to the redemption date, to the registered owner of the Bonds at its address appearing on the registration books.

4.3 Payment of Redeemed Bonds. (a) After notice shall have been given in the manner provided in Section 4.2, the Bonds or the portion thereof called for redemption shall become due and payable on the redemption date so designated. Except as otherwise provided in Section 4.4, such Bonds shall be paid at the Redemption Price, plus accrued interest to the redemption date, upon presentation and surrender of such Bonds at the office of the Issuer, and if there shall be called for redemption less than all of a Bond, the Issuer shall, upon the surrender of such Bond and without charge to the owner thereof, (i) pay the Redemption Price allocable to

the amount of such Bond being prepaid, and (ii) note such partial prepayment in the Table of Prepayments on the face of the Bond or, at the option of the Holder thereof, exchange the Bond for a new fully registered Bond in the aggregate principal amount remaining unpaid.

(b) If, on the redemption date, moneys for the redemption of the Bonds or portion thereof to be redeemed, together with interest thereon to the redemption date and any required premium are on deposit at the place of payment on such date, the Bonds or portion thereof so called for redemption shall cease to bear interest and shall no longer be outstanding hereunder or be secured by the Security Agreement or the Assignment or be entitled to the benefits of this Agreement or the Guaranty. If such moneys shall not be so available on the redemption date, the Bonds or portion thereof shall continue to bear interest until paid at the same rate as they would have borne had they not been called for redemption and shall continue to be secured by the Security Agreement and the Assignment and be entitled to the benefits of this Agreement and the Guaranty.

4.4 Provision for Home Office Payments of Principal, Premium and Interest. Notwithstanding any other provision of this Agreement or the Bonds, the Company and the Issuer will cause all payments of principal of, premium, if any, and interest on the Bonds owned by any Bondholder to be made according to an agreement entered into by the Issuer with the Holder of any Bond providing for the making to such Holder of all payments of principal, premium, if any, and interest and any other amounts due on such Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided in this Agreement or the Bonds, without presentation and surrender of such Bond, provided that such agreement contains an agreement on the part of the Holder (a) to notify the Issuer and the Company of the name and address of any transferee of the Bond and (b) to make a notation on the Bond, prior to the registration of transfer of such Bond, of the date to which interest has been paid thereon and of the amount of any prepayments made on account of the principal thereof. Section 9.1 shall constitute such an agreement with the Purchaser. All payments by such method shall be valid and effectual to discharge the liability of the Issuer on such Bonds to the extent of the sums so paid.

SECTION 5. WARRANTIES, REPRESENTATIONS AND AGREEMENTS OF THE ISSUER

The Issuer warrants, represents and agrees that:

5.1 Organization and Authority. (a) The Issuer is a governmental agency and instrumentality of the State of New York, duly organized and existing under the Constitution and the laws of the State of New York, particularly the New York State Industrial Development Agency Act (constituting Title 18-A of the General Municipal Law) and under Chapter 132 of the 1973 Laws of New York (herein collectively called the "Act").

(b) Under the Act, it is the purpose of the Issuer to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their standard of living, and to achieve such purposes, the Issuer has the power, among others, to acquire, construct, reconstruct, lease, improve, maintain, equip, dispose of and grant security interests in land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction which shall be suitable for manufacturing, warehousing, research, commercial, recreational or industrial purposes, including pollution control facilities and railroad facilities. In accordance with the Act, the Issuer has determined to acquire the Project and to lease the Project to the Company pursuant to the Lease.

(c) The Issuer has all requisite power and authority under the Act (1) to execute and deliver this Agreement, the Security Agreement, the Lease and the Assignment, (2) to issue, sell and deliver the Bonds, and to receive the proceeds thereof, as provided herein, (3) to use such proceeds to acquire, improve, equip and finance the cost of the Project, (4) to maintain, own, sell and dispose of the Project, (5) to lease the Project to the Company pursuant to the Lease and to prescribe the terms and conditions of payments by the Company to meet the payments which shall become due on the Bonds, (6) to assign its rights under and the revenues derived and to be derived by the Issuer from the Lease to the Purchaser pursuant to the Assignment, (7) to grant a Lien on and a security interest in the Project to the Purchaser pursuant to the Security Agreement to secure the

punctual payment of the principal of and interest on the Bonds and (8) to perform and observe the provisions of this Agreement, the Bonds, the Lease, the Assignment and the Security Agreement on its part to be performed and observed.

5.2 Pending Litigation. There is no action, suit, proceeding or investigation at law or in equity before or by any court, arbitration board or tribunal, public board or body pending or threatened against or affecting the Issuer, or, to the best knowledge of the Issuer, any basis therefor, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by this Agreement, the Security Agreement, the Lease or the Assignment, or which, in any way, would adversely affect the validity or enforceability of the Bonds, this Agreement, the Security Agreement, the Lease or the Assignment, or any other agreement or instrument to which the Issuer is a party and which is used or contemplated for use in consummation of the transactions contemplated by this Agreement, the Security Agreement, the Lease or the Assignment, or the exemption from Federal income taxation or taxation in the State of New York of the Bonds and the interest thereon.

5.3 Transactions are Legal and Authorized. The sale of the Bonds and the execution, delivery and due performance of this Agreement, the Security Agreement, the Lease, the Assignment and any and all other agreements relating thereto or hereto, and the compliance with all the provisions of each thereof, hereof and of the Bonds by the Issuer:

(a) are within the purposes, powers and authority of the Issuer;

(b) have been done in full compliance with the provisions of the Act, are legal, will not conflict with or constitute on the part of the Issuer a violation of, the Constitution of the State of New York or a violation, breach of or default under, or result in the creation of any Lien or encumbrance upon any Property of the Issuer, other than the Liens contemplated in the Security Agreement, the Lease and the Assignment, under the provisions of, any charter instrument, by-law, indenture, mortgage, deed of trust, note agreement or other agreement or instrument to which the Issuer is a party or by which the Issuer is bound or any license, judgment, decree, law, statute, order, rule or regulation of any court or governmental agency or body having

jurisdiction over the Issuer or any of its activities or Properties; and

(c) have been duly authorized by the Resolution, which remains in full force and effect.

When delivered to the Purchaser in accordance with this Agreement, the Bond being purchased hereunder will be duly authorized, executed, issued and delivered and will constitute a legal, valid and binding obligation of the Issuer payable solely from the revenues and other funds of the Issuer pledged therefor under the Assignment, and the Bondholders, their transferees and assigns will be entitled to the benefits of the Security Agreement, the Lease and the Assignment, and the assigns of this Agreement will be entitled to the benefits hereunder.

5.4 No Defaults. No event has occurred and no condition exists which, upon the issue of the Bonds, or thereupon with notice and/or passage of time, would constitute an Event of Default. The Issuer is not in default in any material respect under any term of any agreement, or other instrument to which it is a party or by which it may be bound.

5.5 Governmental Consent. All consents, approvals, authorizations and orders of, or filing, registration, or qualification with, any governmental or regulatory authorities (including, without limitation, the Commissioner of Transportation of the State of New York pursuant to Section 854(11) of the General Municipal Law) which are required to be obtained by the Issuer for the consummation of the transactions contemplated by this Agreement, the Bonds, the Security Agreement, the Lease and the Assignment have been duly and validly obtained or performed and are in full force and effect.

5.6 Use of Project for Public Purposes. The Issuer has determined that the Project and the use of the proceeds from the sale of the Bonds therefor will accomplish the public purposes set forth in the Act.

5.7 Private Offering. The Issuer has not offered any of the Bonds or any similar Security of the Issuer for sale to, or solicited offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, any prospective purchaser other than the Purchaser.

5.8 Covenants of the Issuer. The Issuer hereby covenants that:

(a) It will apply the proceeds from the sale of the Bonds and the revenues derived under the Lease for the purposes specified and in the manner provided herein and in the Lease and the Assignment as in force from time to time.

(b) It will faithfully observe and perform at all times any and all covenants, undertakings, stipulations and provisions on its part to be observed or performed contained (i) herein, (ii) in any Bond executed and delivered hereunder, (iii) in the Lease, (iv) in the Security Agreement and (v) in the Assignment.

(c) It will promptly pay or cause to be paid the Debt Service Payment on every Bond issued hereunder at the place, on the dates and in the manner provided herein. All Debt Service Payments on the Bonds and all other amounts payable by the Issuer hereunder shall be payable solely from revenues and receipts derived from the leasing or sale of the Project and as otherwise provided herein, in the Lease and in the Assignment. Nothing herein, in the Bonds or in the Lease or the Assignment shall be construed as pledging any funds or assets of the Issuer other than those pledged hereby or thereby. Neither the State of New York nor any political subdivision thereof (other than the Issuer) shall in any event be liable for the payment of any Debt Service Payment on any of the Bonds or for the performance of any pledge, mortgage, obligation or agreement undertaken by the Issuer.

(d) The Project has been completed.

(e) The Security Agreement is a first Lien upon the Project, and the Assignment is a first Lien upon the rights of the Issuer under the Lease; and the Issuer will not create or suffer to be created any Lien having priority or preference over either of such first Liens upon the Project, the rights of the Issuer under the Lease or any part thereof, except for Permitted Encumbrances.

(f) It will take all legally available action to cause the Company fully to perform all duties and acts

and fully to comply with the covenants of the Company required by the Lease in the manner and at the times provided in the Lease.

(g) It will cause this Agreement, the Security Agreement, the Lease and the Assignment and all supplements hereto and thereto, together with all other security instruments and financing statements, to be recorded and filed, as the case may be, in such manner and in such places as may be required by law in order to perfect the Liens of, and the security interests created by the Security Agreement and the Assignment.

(h) All books and documents in its possession relating to the Project and the revenues derived from the Project shall at all reasonable times be open to inspection by such accountants or other agents as the Purchaser or any other Holder may from time to time designate.

SECTION 6. WARRANTIES, REPRESENTATIONS AND AGREEMENTS OF THE COMPANY

The Company warrants, represents and agrees that:

6.1 Subsidiaries. The Company has no Subsidiaries. Exhibit F hereto states the name of each of the Company's corporate and joint venture Affiliates and the nature of the affiliation.

6.2 Corporate Organization and Authority. The Company:

(a) is a corporation duly organized, validly existing and in good standing under the laws of the State of New York;

(b) is not in violation of any provision of its certificate of incorporation or its by-laws;

(c) has all requisite corporate power and authority and all necessary licenses and permits to own and operate its Properties and to carry on its business as now conducted and as presently proposed to be conducted; and

(d) has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each jurisdiction where the character of its Properties or the nature of its activities makes such qualification necessary.

6.3 Business and Property. The Audited 1979 Financial Statement (a) correctly describes the general nature of the business and principal Properties of the Company and (b) correctly lists all outstanding indebtedness for borrowed money (including all capitalized leases) of the Company.

6.4 Financial Statements. (a) The consolidated balance sheets of GWI and its consolidated subsidiaries as of December 31 in the years 1978 and 1979 and the related consolidated income and surplus statements for the fiscal years ended on such dates, all accompanied by reports thereon containing opinions without qualification, except as therein noted, by Price Waterhouse & Co., independent certified public accountants, and the consolidated balance sheet of GWI and its consolidated subsidiaries as of September 30, 1980 and the related consolidated income and surplus statements for the nine months ended on such date, prepared by GWI, copies of each of which have been delivered to the Purchaser, have been prepared in accordance with generally accepted accounting principles consistently applied, and present fairly the financial position of GWI and its consolidated subsidiaries as of such dates and the results of their operations for such periods. These consolidated financial statements include the accounts of all Subsidiaries of GWI for the respective periods during which a Subsidiary relationship existed.

(b) Since December 31, 1979, there has been no change in the business, prospects, profits, Properties or condition, financial or otherwise, of GWI or any of its Subsidiaries except changes in the ordinary course of business, none of which individually or in the aggregate has been materially adverse.

6.5 Full Disclosure. The financial statements referred to in Section 6.4 do not, nor does this Agreement, the Guaranty or any written statement furnished by or on behalf of the Company to the Purchaser in connection with the negotiation of the sale of the Bonds or this Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein

or herein not misleading. There is no fact which the Company has not disclosed to the Purchaser in writing which materially adversely affects nor, so far as the Company can now foresee, will materially affect adversely the Properties, business, prospects, profits or condition (financial or otherwise) of GWI or any of its Subsidiaries or the ability of the Company to perform its obligations under this Agreement, the Acceptance, the Guaranty or the Lease.

6.6 Pending Litigation. There are no proceedings pending, or to the knowledge of the Company threatened, against or affecting the Company in any court or before any governmental authority or arbitration board or tribunal which involve the possibility of materially adversely affecting the Properties, business, prospects, profits or condition (financial or otherwise) of the Company, or the ability of the Company to perform and comply with this Agreement, the Acceptance, the Guaranty or the Lease. The Company is not in default with respect to any order of any court, governmental authority or arbitration board or tribunal.

6.7 Title to Properties. The Company has good and marketable title in fee simple (or its equivalent under applicable law) to all the real property, and has good title to all the other Property, it purports to own, including that reflected in the most recent balance sheet referred to in Section 6.4 (except as sold or otherwise disposed of in the ordinary course of business since the date of said balance sheet) except for certain Property subject to that certain Mortgage, dated June 26, 1972 from the Company to Warren H. Curry and Doris E. Curry.

6.8 Patents and Trademarks. The Company does not own or possess any patents, trademarks, service marks, trade names, copyrights, licenses, or rights with respect to the foregoing, and none of the foregoing is necessary for the present conduct of its business.

6.9 Transactions are Legal and Authorized. The execution, delivery and performance of this Agreement, the Acceptance, the Lease and the Guaranty and compliance with all the provisions hereof and thereof by the Company:

(a) are within the corporate powers of the Company and have been duly authorized by all necessary corporate action on the part of the Company (no action of the stockholders of the Company being required by law,

the certificate of incorporation or by-laws of the Company or otherwise); and

(b) are legal and will not conflict with or result in any violation or breach in any of the provisions of, or constitute a default under or result in the creation of any Lien upon any Property of the Company (except as contemplated in the Lease) under the provisions of, any agreement, charter instrument, by-law or other instrument to which the Company is a party or by which it may be bound.

6.10 No Defaults. No event has occurred and no condition exists which, upon the issue of the Bonds, or thereupon with notice and/or passage of time, would constitute an Event of Default. The Company is not in default in any material respect under any term of its charter instruments or by-laws. The Company is not in default under any agreement under which indebtedness of the Company is outstanding or any other material agreement or instrument to which it is a party or by which it may be bound.

6.11 Governmental Consent. Neither the nature of the Company or of any of its businesses or Properties, nor any relationship between the Company and the Issuer or any other Person, nor any other circumstance in connection with the execution, delivery and performance of this Agreement, the Security Agreement, the Lease, the Assignment, the Acceptance and the Guaranty, or the offer, issue, sale or delivery of the Bonds is such as to require on the part of the Company a consent, approval or authorization of, or filing, registration or qualification with, any governmental authority other than the Issuer, except for (i) the approval of the United States Interstate Commerce Commission required by 49 U.S.C. §11301 (which approval has heretofore been given), (ii) any consents, approvals, authorizations or filings required by the Act, (iii) the due filing and/or recording of this Agreement, the Security Agreement, the Lease and the Assignment with the United States Interstate Commerce Commission in accordance with 49 U.S.C. §11303, and (iv) the filing of Uniform Commercial Code financing statements in connection with the transactions contemplated by this Agreement, the Security Agreement, the Lease and the Assignment.

6.12 Taxes. (a) All tax returns required to have been filed by the Company in any jurisdiction have in fact

been filed, and all taxes, assessments, fees and other governmental charges upon the Company, or upon any of its Properties, incomes or franchises, which are due and payable have been paid, other than filings and payments pertaining to certain property taxes in respect of accumulated rail mileage which may have been assessed by the taxing authority of any state through which railroad cars of the Company have traveled, which in the aggregate do not exceed \$25,000. The Company does not know of any proposed material additional tax assessment against it.

(b) The provisions and reserves for taxes on the books of the Company are adequate for all open years, and for its current fiscal period. The amount of the reserve for Federal income taxes reflected in the consolidated balance sheet of GWI and its Subsidiaries as of December 31, 1979 is an adequate provision for such Federal income taxes, if any, as may be payable by GWI and its Subsidiaries for the fiscal years 1974 through 1979.

6.13 Compliance with Law. The Company:

(a) is not in violation of any law, ordinance, governmental rule or regulation to which it is subject; and

(b) has not failed to obtain any license, permit, franchise or other governmental authorization necessary to the ownership of its Property or to the conduct of its business,

which violation or failure to obtain might materially adversely affect the business, prospects, profits, Properties or condition (financial or otherwise) of the Company or the ability of the Company to perform its obligations under this Agreement, the Acceptance, the Guaranty or the Lease.

6.14 Restrictions on Company. The Company is not a party to any contract or agreement, or subject to any charter or other corporate restriction, which materially and adversely affects its business. The Company is not a party to any contract or agreement which restricts the right or ability of the Company to incur indebtedness for money borrowed, and the Company has not agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its Property, whether now owned or hereafter acquired, to be subject to a Lien.

6.15 Use of Proceeds. The proceeds of the sale of the Bonds will be used solely for the payment of the costs of the Project or to reimburse the Company for such costs. None of the transactions contemplated in this Agreement (including, without limitation thereof, the use of the proceeds from the sale of the Bonds) will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations G, T and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. None of the proceeds from the sale of the Bonds will be used to purchase or carry (or refinance any borrowing the proceeds of which were used to purchase or carry) any "security" within the meaning of the Securities Exchange Act of 1934, as amended.

6.16 Private Offering. Neither the Company nor GWI has offered any of the Bonds or any similar Security of the Issuer, GWI or the Company for sale to, or solicited offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, any prospective purchaser, other than the Purchaser and no more than five (5) other institutional investors, each of which was offered the Bonds at private sale for investment. The Company agrees that neither it nor anyone acting on its behalf will offer the Bonds or any part thereof or any similar securities for issue or sale to, or solicit any offer to acquire any of the same from, anyone so as to bring the issuance and sale of the Bonds within the provisions of Section 5 of the Securities Act of 1933, as amended.

6.17 Nature of the Project; Compliance with Section 103 of the Code. (a) The proceeds of the sale of the Bonds will be used solely to finance the cost of the Project. All of the proceeds will be expended to reimburse the Company for "property of a character subject to the allowance for depreciation" within the meaning of Section 103(b)(6)(A) of the Code, and no part of such proceeds will be used to finance inventory or working capital.

(b) There is outstanding no part of any issue of industrial development bonds as defined in Section 103(b)(2) of the Code and the Regulations thereunder the interest on which is excludable from the gross income of the holders thereof by reason of Section 103(b)(6) of the Code and the proceeds of which have been or will be used with respect to

facilities, the principal user or users of which are or will be the Company or any related person or persons (as defined in Section 103(b) of the Code and the Regulations thereunder) and which are or will be wholly or partially located in the County of Livingston, New York, or are or will be contiguous to or integrated with any facilities so located. There is not, nor will there be, any principal user of the Project other than the Company.

(c) Substantially all of the use of the Project will be within the territorial boundaries of the County of Livingston, New York.

(d) Acquisition of the Project was not commenced by the Company before December 4, 1980.

(e) As the parties intend that interest on the Bonds shall continue to be exempt from Federal income taxation, the Company covenants with the Holders of the Bonds that it will not make, or permit to be made on its behalf, any payment out of Bond proceeds, if, as a result of such payment, any of the Bond proceeds expended at such time would be considered as not having been expended for land or depreciable property.

(f) The Company certifies and represents that all of the proceeds of the Bonds will be expended on the Closing Date to reimburse the Company for the payment of the costs of the Project.

(g) The Company covenants and agrees with the Issuer and the Holders of the Bonds that it will take no action which would cause the Bonds to be "arbitrage bonds" within the meaning of Section 103(c) of the Code.

6.18 ERISA. (a) The present value of all benefits vested under all "employee pension benefit plans", as such term is defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended (herein called "ERISA"), maintained by the Company and its Subsidiaries, as from time to time in effect (herein called the "Pension Plans"), did not, as of December 31, 1979, the last annual valuation date, exceed the value of the assets of the Pension Plans allocable to such vested benefits by an amount greater than \$313,270 in the aggregate.

(b) Neither any of the Pension Plans nor any trusts created thereunder, nor any trustee or administrator thereof, has engaged in a "prohibited transaction", as such term is defined in Section 4975 of the Code, which would subject the Pension Plans or any of them, any such trust, or any trust or any trustee or administrator thereof, or any party dealing with the Pension Plans or any such trust to the tax or penalty on prohibited transactions imposed by said Section 4975.

(c) Neither any of the Pension Plans nor any such trusts have been terminated, nor have there been any "reportable events", as that term is defined in Section 4043 of ERISA, since the effective date of ERISA except the termination, effective as of January 1, 1980, of the Genesee and Wyoming Railroad Company Supplemental Pension Plan for Non-Union Hourly Employees.

(d) Neither any of the Pension Plans nor any such trusts have incurred any "accumulated funding deficiency", as such term is defined in Section 302 of ERISA (whether or not waived), since the effective date of ERISA.

SECTION 7. CLOSING CONDITIONS

The Purchaser's obligation to purchase and pay for the Bond to be delivered to the Purchaser on the Closing Date and the Issuer's obligation to make the initial disbursement of the proceeds from the sale of the Bonds shall be subject to the following conditions precedent:

7.1 Opinions of Counsel. The Purchaser shall have received from Messrs. Harter, Secrest & Emery, counsel for the Company and GWI, Messrs. Willkie Farr & Gallagher, bond counsel, and Raymond L. Sciarrino, Esq., counsel for the Issuer, the closing opinions in the respective forms of Exhibits G, H and I, respectively, to this Agreement.

7.2 Warranties and Representations True as of the Closing. The warranties and representations of the Issuer contained in the Lease, the Security Agreement and Section 5 hereof and the warranties and representations of the Company contained in the Lease and Section 6 hereof shall be true in all material respects on the Closing Date with the same effect as though made on and as of that date. The warranties and representations of GWI contained in the

Guaranty shall be true in all material respects on the Closing Date with the same effect as though made on and as of that date.

7.3 Compliance with this Agreement. The Issuer and the Company shall have performed and complied with all agreements and conditions contained herein which are required to be performed or complied with by, respectively, the Issuer or the Company before or on the Closing Date.

7.4 Resolution. The Resolution shall be in full force and effect on, and shall not have been modified as of, the Closing Date.

7.5 Security Agreement. The Security Agreement shall have been executed and delivered by the Issuer in the form of Exhibit A to this Agreement, with such changes as may have been approved by the Purchaser and the Issuer, and on the Closing Date shall be in full force and effect.

7.6 Acceptance. The Acceptance shall have been executed and delivered by the Company in the form provided in Exhibit A to this Agreement, with such changes as may have been approved by the Purchaser, the Issuer and the Company, and on the Closing Date shall be in full force and effect.

7.7 Assignment. The Assignment shall have been executed and delivered by the Issuer in the form of Exhibit B to this Agreement, with such changes as may have been approved by the Purchaser and the Issuer, and on the Closing Date shall be in full force and effect.

7.8 Lease. The Lease shall have been executed and delivered by the Issuer and the Company in the form of Exhibit C to this Agreement, with such changes as may have been approved by the Purchaser, the Issuer and the Company, and on the Closing Date shall be in full force and effect.

7.9 Guaranty. The Guaranty shall have been executed and delivered by GWI and the Company in the form of Exhibit D to this Agreement, with such changes as may have been approved by GWI, the Company and the Purchaser, and on the Closing Date shall be in full force and effect.

7.10 Filings and Recordations. This Agreement, the Security Agreement, the Lease and the Assignment shall have been duly filed in accordance with 49 U.S.C. §11303, Uniform

Commercial Code financing statements shall have been duly filed with respect to the Project in all appropriate offices in the State of New York, and all other recordations and filings appropriate or required by law in order fully to perfect, preserve and protect the Liens of the Security Agreement and the Assignment shall have been performed.

7.11 No Litigation. No litigation or proceeding shall be threatened or pending in any court or other official body (i) to restrain or enjoin the issuance or delivery of any of the Bonds, (ii) which in any way questions or affects the validity of any of the Bonds, any provisions thereof, any provisions of the Resolution, this Agreement, the Security Agreement, the Lease, the Assignment, the Guaranty or any proceedings taken with respect to the foregoing, or (iii) which questions the Issuer's creation, organization or existence or the titles to office of any of its officers, or its powers to acquire, finance and lease the Project.

7.12 Bills of Sale. The Purchaser shall have received copies of all manufacturer's bills of sale, and all bills of sale from the Company to the Issuer, for the property whose acquisition was financed in whole or in part with the proceeds of the sale of the Bonds and which is subject to the Lien of the Security Agreement, the aggregate sale price of which shall be at least \$1,000,000.

7.13 Officers' Certificates. The Purchaser shall have received (i) a certificate dated the Closing Date signed by an appropriate official of the Issuer certifying, insofar as concerns the Issuer, that the conditions specified in Sections 7.2, 7.3, 7.4, 7.5, 7.7, 7.8, 7.10 and 7.11 have been fulfilled, (ii) a certificate dated the Closing Date signed by the Chief Executive Officer, the President or a Vice President of the Company certifying, insofar as concerns the Company, that the conditions specified in Sections 7.2, 7.3, 7.6, 7.8, 7.9, 7.10 and 7.11 have been fulfilled by the Company and (iii) a certificate dated the Closing Date signed by the President, the Treasurer or a Vice President of GWI certifying, as to GWI, that the conditions specified in Sections 7.2, 7.9 and 7.11 have been fulfilled by GWI. The officers' certificate of the Company delivered pursuant to clause (ii) of this Section 7.13 shall include computations showing compliance by the Company with the provisions of Sections 8.10 and 8.11 as of the Closing Date.

7.14 Approvals. The Issuer, GWI and the Company shall have obtained and delivered to the Purchaser, in form and

substance satisfactory to the Purchaser and its special counsel and bond counsel, certified copies of any requisite notices, orders, consents, approvals, licenses and authorizations required to be obtained of all governmental or public authorities (including, without limitation, the United States Interstate Commerce Commission and the Commissioner of Transportation of the State of New York) which are necessary or appropriate to enable each of the Issuer, the Company and GWI, as appropriate, to execute and deliver, perform its obligations under, this Agreement, the Resolution, the Security Agreement, the Acceptance, the Lease, the Assignment, the Guaranty and the documents executed or to be executed pursuant hereto and thereto and to carry out the transactions contemplated hereby and thereby, in each such case all such approvals to be in full force and effect on the Closing Date.

7.15 Proceedings Satisfactory. All proceedings taken in connection with the sale of the Bonds and all documents and papers relating thereto shall be satisfactory to the Purchaser and its special counsel. The Purchaser and its special counsel shall have received copies of such documents and papers as either of them may reasonably request in connection therewith, all in form and substance satisfactory to the Purchaser and its special counsel.

7.16 Tax Matters. None of the following events shall have occurred between the date hereof and the Closing Date:

(1) legislation shall have been enacted by the Congress or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to either House by any Committee thereof to which such legislation has been referred for consideration, or

(2) a decision shall have been rendered by any court of the United States, or

(3) an order, ruling, regulation or official statement shall have been made by the Treasury Department of the United States or the Internal Revenue Service,

with the purpose or effect, directly or indirectly, of imposing Federal income taxation upon any of the revenues or other income which would be derived by the Issuer under the

Lease or any of the interest payments which would be received by the Holders of any of the Bonds.

SECTION 8. COVENANTS OF THE COMPANY

The Company covenants and agrees that, from and after the date of execution of this Agreement and so long as any Bonds shall remain outstanding, it will comply with the following provisions:

8.1 Notices and Certificates. The Company will deliver to the Purchaser and to each subsequent Holder of the Bonds:

(a) immediately upon becoming aware of the occurrence of any (i) "reportable event", as such term is defined in Section 4043 of ERISA, or (ii) "prohibited transaction", as such term is defined in Section 4975 of the Code, in connection with any Pension Plan or any trust created thereunder, a written notice specifying the nature thereof, what action the Company is taking or proposes to take with respect thereto and, when known, any action taken by the Internal Revenue Service with respect thereto;

(b) immediately upon becoming aware of the existence of any condition or event which constitutes or with notice and/or the passage of time would constitute an Event of Default, a written notice specifying the nature and period of existence thereof and what action the Company is taking and proposes to take with respect thereto;

(c) immediately upon becoming aware that any Holder of the Bonds or the holder of any other evidence of indebtedness or other Security of the Company or any Subsidiary, has given notice or taken any other action with respect to a claimed default or event of default, a written notice specifying the notice given or action taken by such Holder or holder and the nature of the claimed default or event of default and what action the Company is taking or proposes to take with respect thereto;

(d) as soon as practicable (i) after the end of each of the first three quarterly fiscal periods in each fiscal year of the Company, and in any event within 45 days thereafter, and (ii) after the end of each fiscal year of the Company, and in any event within 120 days thereafter, a certificate of the Chief Executive Officer, the President or Treasurer

of the Company setting forth (1) the information (including detailed calculations) required in order to establish whether the Company was in compliance with the requirements of Sections 8.10 and 8.11 during such quarterly fiscal period or such fiscal year, as appropriate; and (2) that the signer has reviewed the relevant terms of this Agreement, the Security Agreement, the Lease, the Assignment and the Guaranty and has made, or caused to be made under his supervision, a review of the transactions and conditions of the Company from the beginning of such quarterly fiscal period or such fiscal year, as appropriate, to the date of the certificate and that such review has not disclosed the existence during such period of any condition or event which constitutes a Default or an Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action the Company has taken or proposes to take with respect thereto; and

(e) with reasonable promptness, such other data and information as from time to time may be reasonably requested.

8.2 Inspection. The Company will permit any Holder of the Bonds, or its representatives, at such Holder's expense, to visit and inspect any of the Properties of the Company or any Subsidiary, to examine all their books of account, records, reports and other papers, to make copies and extracts therefrom, and to discuss their respective affairs, finances and accounts with their officers, employees and independent public accountants (and by this provision the Company authorizes said accountants to discuss the finances and affairs of the Company and its Subsidiaries) all at such reasonable times and as often as may be reasonably requested and upon reasonable notice.

8.3 Payment of Rental Payments and Maintenance of Office. The Company will punctually pay or cause to be paid the rental payments under the Lease, in such amounts and at such times as shall be sufficient to enable the Issuer to provide for the payment of the principal, interest and premium, if any, on the Bonds as and when the same fall due, and will maintain an office or agency in the State of New York where notices, presentations and demands in respect of this Agreement or the Bonds may be made upon it. Such office shall be maintained at 3846 Retsof Road, Retsof, New York, until such time as the Company shall so notify the then current Holder of the Bonds of any change of location of such office within such State.

8.4 Prohibited Actions. Neither the Company nor any Subsidiary nor any Affiliate will, directly or indirectly, intentionally take or omit to take any action which could result in an Event of Default or which could result in an Event of Taxability which action or omission to act is taken in order to redeem the Bonds at such time or at such price as would not otherwise be permitted for redemption of the Bonds hereunder.

8.5 Obligations Upon Occurrence of Event of Taxability. (a) Upon the occurrence of an Event of Taxability the Company at its option may cause the entire principal amount of Bonds at the time outstanding to be redeemed pursuant to Section 4.1(d). The exercise of such option shall not relieve the Company of its obligation to pay to each Holder and former Holder of Bonds the amounts required to be paid pursuant to paragraph (b) of this Section 8.5 if the provisions of such paragraph (b) are applicable.

(b) Whether or not the Issuer's obligations with respect to the Bonds shall have been discharged or terminated, within ninety (90) days after receiving written notice of the occurrence of an Event of Taxability, the Company covenants to pay as an indemnity to each Holder and former Holder of a Qualified Bond:

(i) a sum equal to 9.75% per annum for the Inclusion Period with respect to such Bond; and

(ii)(A) an amount which (after deduction of all taxes, fees or other charges required to be paid by the Holder or former Holder of such Qualified Bond in respect of the receipt of such amount under the laws or regulations of the United States or of any political subdivision or taxing authority thereof or therein) will be equal to any interest, penalties or "additions to tax" provided for under Sections 6651 through 6659 of the Code, not deductible for Federal income tax purposes, which are payable by the Holder or former Holder of such Qualified Bond with respect to such Qualified Bond in connection with the occurrence of such event, plus

(B) an amount equal to the sum of any interest, penalties or "additions to tax" provided for under Sections 6651 through 6659 of the Code, deductible for Federal income tax purposes, which are payable by the Holder or former Holder of such Qualified Bond in connection with the occurrence of such event.

(iii) for the purposes of the preceding paragraph (b)(ii), the amount of interest, penalties or "additions to tax" which are payable by the Holder or former Holder of any Qualified Bond shall be computed without regard to (A) any reduction in such amount payable by reason of any set-off, carryover, carry-back, credit or loss or gain, or otherwise, or (B) any reduction in any of such taxes, fees or other charges resulting from the payment of any of such taxes, fees or other charges, which may be available to such Holder or former Holder.

(c) The following terms shall have the following meanings:

(i) "Event of Taxability" shall mean (A) the issuance by the Internal Revenue Service of a statutory notice of deficiency or similar notice which asserts in effect that amounts received in respect of the stated interest on any of the Bonds is includible in the gross income of a Holder or former Holder thereof, other than for a period during which such Holder or former Holder is or was a "substantial user" of the Project or a "related person" as such terms are defined in the Code, or (B) the delivery to the Bondholders, the Company and the Issuer of a written opinion of nationally recognized bond counsel, reasonably satisfactory to the Holder of the Bonds at the time outstanding and the Company, to the effect that such amounts are so includible (which opinion, if the conclusion therein is to the effect that the opinion of Willkie Farr & Gallagher rendered in connection with the issuance of the Bonds was incorrect when given, shall be delivered only after the Holder or former Holder shall have given Willkie Farr & Gallagher reasonable notice under the circumstances of the contemplated issuance thereof, provided that the giving of such notice is reasonably possible), or (C) the occurrence of a Change in Law. The Company will promptly notify the then current Holder of the Bonds in writing of the existence of an Event of Taxability.

(ii) A "Change in Law" shall be deemed to occur when legislation is (A) signed into law by the President of the United States of America, (B) approved by a vote of two-thirds of each house of the Congress of the United States, over the President's veto, or (C) not returned by the President within 10 days (Sundays excepted) after it has been presented to him while the

Congress is in session, the effect of which legislation, in the opinion of nationally recognized bond counsel reasonably satisfactory to the Holder of the Bonds at the time outstanding and the Company, is that interest on the Bonds is includible in the gross income of a Holder or former Holder of the Bonds for Federal income tax purposes, other than a Holder who is or was a "substantial user" of the Project or a "related person" as such terms are defined in the Code.

(iii) "Taxable Date" means, with respect to each Holder or former Holder of a Qualified Bond, the earliest effective date as of which the amounts paid or payable in respect of the stated interest on such Bond are determined to be includible in the gross income of such Holder or former Holder of such Bond (other than any Holder who is a "substantial user" of the Project or "related person" as such terms are defined in the Code), according to either a notice or an opinion of counsel as described in clause (A) or (B) of the definition of Event of Taxability.

(iv) "Qualified Bond" means any Bond, interest on which is paid on or after a Taxable Date whether or not such Bond has been redeemed, has matured or has been transferred on or after such Taxable Date.

(v) "Inclusion Period", with respect to any Qualified Bond, means the period beginning on the Taxable Date with respect to such Bond and ending on the date of the occurrence of the Event of Taxability or the date of redemption, transfer or maturity of such Qualified Bond (whichever occurs first).

(d) If at any time an Event of Taxability shall have occurred, the Company hereby agrees to purchase the Bonds from the then current Holder thereof, upon written demand therefor and tender of such Bonds for purchase (which demand and tender shall be made within ninety (90) days following notice to such Holder of such Event of Taxability), at a purchase price equal to the outstanding principal amount of such Bonds plus interest accrued to the date of payment and any amounts then due pursuant to this Section 8.5. Such purchase shall be effected within sixty (60) days following such demand and tender.

(e) If, by reason of a determination that interest on the Bonds is exempt from tax, any Holder or former Holder

shall receive a refund on account of taxes as to which it has theretofore been indemnified by the Company, such Holder or former Holder will promptly pay over to the Company (i) the amount of such refund net of any taxes payable by such Holder or former Holder by reason of the receipt of such refund, plus (ii) the amount of any tax benefit to such Holder or former Holder by reason of such payment; provided that the aggregate amount payable by any Holder or former Holder to the Company on account of any refund shall not exceed the amount of the indemnity theretofore paid by the Company to such Holder or former Holder on account of the taxes giving rise to such refund. This paragraph (e) does not and is not intended to create an obligation upon any Holder or former Holder of the Bonds to protest, challenge, contest or otherwise dispute the Event of Taxability, to continue any such protest, challenge, contest or dispute if undertaken, to consult with the Company with respect thereto, to allow the Company to assume, direct or otherwise control the representation of such Holder or former Holder in any administrative, judicial or other proceeding in connection therewith or to divulge or grant access to information or material which in its sole judgment is sensitive, privileged or confidential, including without limitation its tax returns and any information relating thereto.

(f) The covenants made by the Company in this Section 8.5 and the obligations of the Company and the Bondholders hereunder shall survive the termination of this Agreement and the Lease, the Issuer's obligations under the Security Agreement and the Assignment and the payment in full of the Bonds.

8.6 Filing of Security Instruments. The Company will cause to be filed all documents, including without limitation continuation statements under the Uniform Commercial Code of the State of New York, in such manner and in such places as may, in the opinion of counsel to the Company rendered pursuant to Section 12.8(c) of the Lease, be required by law in order to protect and maintain in force the Liens of, and the security interests created by, the Security Agreement, the Lease and the Assignment.

8.7 Payment of Taxes and Claims. The Company, and each Subsidiary, will pay, before they become delinquent,

(a) all taxes, assessments and governmental charges or levies imposed upon it or its Property, and

(b) all claims or demands of materialmen, mechanics, carriers, warehousemen, landlords and other like Persons which, if unpaid, might result in the creation of a Lien upon its Property,

provided that items of the foregoing description need not be paid while being contested in good faith and by appropriate proceedings and provided further that adequate book reserves have been established with respect thereto and provided further that the owing company's title to, and its right to use, its Property is not materially adversely affected thereby.

8.8 Maintenance of Properties, Nature of Business and Corporate Existence. The Company, and each Subsidiary, will:

(a) maintain its Property in good condition and make all necessary renewals, replacements, additions, betterments and improvements thereto;

(b) maintain, with financially sound and reputable insurers, insurance with respect to its Properties and business against such casualties and contingencies, of such types (including public liability, larceny, embezzlement or other criminal misappropriation insurance) and in such amounts as is customary in the case of corporations of established reputations engaged in the same or a similar business and similarly situated;

(c) keep true books of records and accounts in which full and correct entries will be made of all its business transactions, and reflect in its financial statements adequate accruals and appropriations to reserves, all in accordance with generally accepted accounting principles;

(d) do or cause to be done all things necessary to preserve and keep in full force and effect its existence, rights and franchises;

(e) not materially alter the nature of its business as described in the Audited 1979 Financial Statement; and

(f) not be in violation of any law, ordinance, or governmental rule or regulation to which it is subject and not fail to obtain any license, permit, franchise

or other governmental authorization necessary to the ownership of its Properties or to the conduct of its business, which violation or failure to obtain might materially adversely affect the business, prospects, profits, Properties or condition (financial or otherwise) of the Company and its Subsidiaries.

8.9 Sale of Assets or Merger. Neither the Company nor any Subsidiary will, without the consent of the then current Holder of the Bonds, which consent shall not be unreasonably withheld:

(a) sell, lease, transfer or otherwise dispose of any of its Properties except in the ordinary course of business; or

(b) consolidate with or merge into any other Person or permit any other Person to consolidate with or merge into it (except that a Subsidiary may consolidate with or merge into the Company or another Subsidiary).

8.10 Current Assets and Liabilities; Tangible Net Worth; Working Capital. (a) The Company will not permit:

(i) the amount of its Current Liabilities at any time to exceed the amount of its Current Assets; or

(ii) the amount of its Tangible Net Worth at any time to be less than \$3,500,000; or

(iii) the amount of its Working Capital at any time to be less than \$1,000,000.

(b) As used in this Section 8.10, the following terms shall have the following meanings:

(i) "Current Assets" shall mean the current assets of the Company, computed in accordance with generally accepted accounting principles;

(ii) "Current Liabilities" shall mean the current liabilities of the Company, computed in accordance with generally accepted accounting principles;

(iii) "Tangible Net Worth" shall mean:

(A) the aggregate amount of all assets of the Company, excluding goodwill, patents, trademarks,

copyrights, franchises, licenses and all other assets of a similar nature as are properly classified as "intangible assets", less

(B) all liabilities and reserves of the Company, all computed in accordance with generally accepted accounting principles;

(iv) "Working Capital" on any date shall mean Current Assets minus Current Liabilities.

8.11 Guaranties. (a) The Company will not make or in any manner become liable in respect of any guaranty except (i) the endorsement in the ordinary course of business of negotiable instruments for deposit or collection; (ii) the guaranty of obligations of an affiliated company for borrowed money; (iii) the guaranty of industrial development revenue bonds issued by the Issuer for the benefit of the Company or any other Subsidiary of GWI, including the Guaranty; and (iv) any other guaranty if, after giving effect thereto, the amount of indebtedness guaranteed pursuant to this clause (iv), will not exceed \$100,000 in aggregate principal amount.

(b) For the purpose of this section, a "guaranty" by the Company shall mean any obligation of the Company guaranteeing or in effect guaranteeing any indebtedness, dividend or other obligation of any other Person (the "primary obligor") in any manner, whether directly or indirectly, including any obligation incurred through an agreement, contingent or otherwise, by the Company:

(1) to purchase such indebtedness or obligation or any Property or assets constituting security therefor;

(2) to advance or supply funds

(i) for the purchase or payment of such indebtedness or obligation; or

(ii) to maintain working capital or other balance sheet condition or any income statement condition or otherwise to advance or make available funds for the purchase or payment of such indebtedness or obligation;

(3) to lease Property or to purchase Securities or other Property or services primarily for the purpose of

assuring the owner of such indebtedness or obligation of the ability of the primary obligor to make payment of the indebtedness or obligation; or

(4) otherwise to assure the owner of the indebtedness or obligation of the primary obligor against loss in respect thereof.

8.12 ERISA Compliance. (a) The Company will not permit the present value of all employee benefits vested under all Pension Plans maintained by the Company and its Subsidiaries to exceed the present value of the assets allocable to such vested benefits by an amount greater than \$800,000 in the aggregate.

(b) All assumptions and methods used to determine the actuarial valuation of vested employee benefits under Pension Plans and the present value of assets of Pension Plans shall be reasonable in the good faith judgment of the Company and shall comply with all requirements of law.

(c) Neither the Company nor any Subsidiary will at any time permit any Pension Plan maintained by it to:

(1) engage in any "prohibited transaction", as such term is defined in Section 4975 of the Code, which could result in the imposition of a tax or penalty upon the Company or any Subsidiary in an amount which, when added to all other such taxes and penalties, exceeds \$100,000;

(2) incur any "accumulated funding deficiency", as such term is defined in Section 302 of ERISA, whether or not waived; or

(3) terminate any such Pension Plan in a manner which results in the imposition of a Lien on the Property of the Company or any Subsidiary pursuant to Section 4068 of ERISA.

SECTION 9. PURCHASER'S SPECIAL RIGHTS; LIABILITY OF THE ISSUER

9.1 Home Office Payment. As permitted by Section 4.4 and the Bonds, all amounts payable to the Purchaser with respect to any fully registered Bond held by the Purchaser or its nominee (without any presentment thereof, except upon

payment of the final installment of principal, and without any notation of such payment being made thereon) will be paid (i) by debits made by the Purchaser to an account of the Company maintained with the Purchaser provided that sufficient funds for such payments are available in any such account and (ii) otherwise by crediting, before 2:00 P.M. New York City time, by bank wire transfer in federal funds, the Purchaser's account in such bank in the United States as may be designated by the Purchaser in writing to the Company and the Issuer. The Purchaser agrees that if it sells or transfers any such Bond it will notify the Issuer and the Company of the name and address of the transferee, and will, prior to the registration of transfer of such Bond, make a notation on such Bond of the date to which interest has been paid thereon and of the amount of any prepayments made on account of the principal thereof. Any payment received pursuant to this Section 9.1 shall be effectual to satisfy the liability of the Issuer with respect to such payment.

9.2 Delivery Expenses. If the Purchaser surrenders any Bond to the Issuer pursuant to Section 2.3 or Section 2.4, for exchange, transfer, payment or redemption in whole or in part, the Company will pay the cost of delivering to or from the Purchaser's home office from or to the Issuer, insured to the satisfaction of the Purchaser, the surrendered Bond and any Bond issued in substitution or exchange for the surrendered Bond.

9.3 Special Obligations. Notwithstanding anything herein to the contrary, all covenants and agreements contained in this Agreement on behalf of the Issuer shall be subject to the provisions of this Section 9.3. The Bonds shall be special revenue obligations of the Issuer as provided in the Act; the principal of, and premium, if any, and interest on, the Bonds are payable solely from revenues or other receipts, funds, monies and property derived from the leasing or sale of the Project and as otherwise provided in the Lease, the Security Agreement, the Assignment and this Agreement, and any amounts payable by the Issuer under this Agreement are payable solely therefrom. Nothing herein or in the Bonds shall be construed as pledging any funds or assets of the Issuer other than those pledged or mortgaged under the Assignment and the Security Agreement. Neither the State of New York, nor Livingston County, nor any municipality thereof shall in any event be liable for the payment of the principal of, or premium, if any, or interest on, any of the Bonds, or for the performance of any pledge, assignment, obligation or agreement of any kind whatsoever herein

of the Issuer, and none of the Bonds shall be construed at any time or in any manner to pledge the faith and credit or taxing power of the State of New York, Livingston County or any municipality thereof.

9.4 Defeasance. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, the principal of and interest and any premium on the Bonds and all other amounts payable by the Issuer under this Agreement, then all covenants, agreements and other obligations of the Issuer hereunder, and the Liens and security interests created by the Security Agreement, the Lease and the Assignment, shall thereupon terminate and be discharged and satisfied, and thereupon all the moneys and properties of the Issuer then subject to such Liens and security interests shall be free and clear thereof. In such event the Holder of the Bonds at the time of such payment shall execute and record or file, at the expense of the Company, all documents requested by the Issuer to effect such discharge and satisfaction.

SECTION 10. EVENTS OF DEFAULT AND REMEDIES

10.1 Events of Default. The following shall be "Events of Default" under this Agreement, and the term "Event of Default" shall mean, when used in this Agreement, any one or more of the following events:

(a) A default in the due and punctual payment of any interest on any Bond; or

(b) A default in the due and punctual payment of the principal or Redemption Price of, or any Sinking Fund Installment with respect to, any Bond, whether at the stated maturity thereof, upon proceedings for redemption thereof, or upon the maturity thereof by declaration; or

(c) A default in the due and punctual payment of any amount specified to be paid by the Company pursuant to Section 8.5; or

(d) A default in the due and punctual payment of any amount specified to be paid by the Company pursuant to Section 5.3(a) or Section 5.3(b) of the Lease; or

(e) A default in the due and punctual payment of any amount specified to be paid by the Company and GWI pursuant to Section 1 or Section 2 of the Guaranty; or

(f) Failure to maintain in full force and effect at all times the insurance required by Section 6.4 of the Lease; or

(g) The making of any levy on or seizure or attachment of any Collateral (as defined in the Security Agreement) which shall remain undischarged or unstayed for a period in excess of thirty (30) days; or

(h) A default in the performance or observance of any covenant contained in Sections 8.8 through 8.12; or

(i) A default in the performance or observance of any other of the covenants, agreements or conditions on the part of GWI contained in the Guaranty or on the part of the Company contained in this Agreement, the Bonds, the Acceptance or the Guaranty and the continuance thereof for a period of thirty (30) days after the earlier of knowledge by the Company or GWI, as the case may be, or written notice given by any Bondholder to the Company or GWI, as the case may be, and the Issuer; or

(j) A default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Issuer in this Agreement or in the Bonds or in the Security Agreement or in the Assignment contained and the continuance thereof for a period of thirty (30) days after the earlier of knowledge by the Issuer or written notice given by any Bondholder to the Issuer and the Company; or

(k) Any warranty, representation or other statement by or on behalf of the Company, the Issuer or GWI contained in this Agreement, the Lease, the Security Agreement, the Assignment, the Guaranty or in any instrument or certificate furnished in compliance herewith or therewith or in reference hereto or thereto or in connection with the issuance of the Bonds, shall have been false or misleading in any material respect when made; or

(l) The failure by GWI or any Subsidiary (including the Company) to make any payment due on any indebtedness or other Security or the occurrence of any event (other than the mere passage of time) or the existence of any condition in respect of any indebtedness or other Security of GWI or any Subsidiary (including the

Company), or under any agreement securing or relating to such indebtedness or other Security, the effect of which is (A) to cause (or permit any holder of such indebtedness or other Security or a trustee to cause) such indebtedness or other Security, or a portion thereof, to become due prior to its stated maturity or prior to its regularly scheduled dates of payment, or (B) to permit a trustee or the holder of any Security (other than common stock of GWI or any Subsidiary) to elect a majority of the directors on the Board of Directors of GWI or such Subsidiary; or

(m) The existence of a final judgment or judgments for the payment of money aggregating in excess of \$100,000 against the Company or GWI, provided that any one of such judgments has been outstanding for more than sixty (60) days from the date of its entry and has not been discharged in full or stayed; or

(n) The dissolution or liquidation of the Company or GWI; or the failure by the Company or GWI generally to pay its debts as they become due; or the assignment by the Company or GWI of all or substantially all of its assets for the benefit of creditors; or the commencement by the Company or GWI (as the debtor) of a case under the Bankruptcy Code or any proceeding under any other insolvency law; or the commencement of a case under the Bankruptcy Code or any proceeding under any other insolvency law against the Company or GWI (as the debtor) and the entry by a court having jurisdiction in the premises of a decree or order for relief against the Company or GWI as the debtor in such case or proceeding, or the consent by the Company or GWI to such case or proceeding, or the failure by the Company or GWI to cause such case or proceeding to be dismissed within sixty (60) days, or the consent by the Company or GWI to or the admission by the Company or GWI of the material allegations against it in any such case or proceeding; or the appointment or authorization of a trustee, receiver or agent of all or substantially all of the Property of the Company or GWI for the purpose of enforcing a Lien against such Property or for the purpose of general administration of such Property for the benefit of creditors. The phrase "dissolution or liquidation of the Company" as used in this paragraph shall not be construed to include any transaction permitted by Section 8.9; or

(o) The occurrence of an "Event of Default" under the Lease.

10.2 Acceleration; Annulment of Acceleration. (a) Upon the occurrence and continuance of an Event of Default, the then current Holder of the Bonds may by notice in writing delivered to the Issuer and the Company, declare all Bonds outstanding immediately due and payable, and such Bonds shall become and be immediately due and payable, anything in the Bonds or in this Agreement to the contrary notwithstanding. In such event, there shall be due and payable on the Bonds an amount equal to the total of (i) either (x) the Redemption Price of all Bonds outstanding computed in accordance with Section 4.1(b), if such Bonds are then subject to redemption pursuant to such Section 4.1(b), or (y) the total principal amount of all such Bonds plus a premium in the amount of 9.75% of such total principal amount, if such Bonds are not then subject to redemption pursuant to Section 4.1(b), plus (ii) all interest accrued thereon and which will accrue thereon to the date of payment. If all of the Bonds outstanding shall become so immediately due and payable, the Issuer shall immediately declare by written notice to the Company all unpaid installments payable by the Company under Section 5.3(a) of the Lease to be immediately due and payable.

(b) At any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy under this Agreement, the Holder of the Bonds then outstanding may annul such declaration and its consequences. No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

10.3 Enforcement of Remedies. (a) Upon the occurrence and continuance of any Event of Default, the Bondholder may proceed forthwith to protect and enforce its rights under the Act, the Bonds, the Security Agreement, the Lease, the Assignment and the Guaranty by such suits, actions or proceedings, including without limitation foreclosure and the sale of the Project, as the Bondholder may deem expedient.

(b) Subject to paragraph (a) of this Section 10.3, the Bondholder may sue for, enforce payment of and receive any amounts due or becoming due from the Issuer, the Company

or GWI for principal, Redemption Price, interest or otherwise under any of the provisions of this Agreement, the Security Agreement, the Bonds, the Lease or the Guaranty, without prejudice to any other right or remedy of the Bondholder.

(c) Regardless of the happening of an Event of Default, the Bondholder may institute and maintain such suits and proceedings as it may be advised shall be necessary or expedient (i) to prevent any impairment of the security under this Agreement, the Security Agreement or the Assignment by any acts which may be unlawful or in violation hereof or thereof or of any resolution authorizing the Bonds, or (ii) to preserve or protect its interests.

10.4 Appointment of Receivers. Upon the occurrence and continuance of an Event of Default and upon the filing of a suit or commencement of other judicial proceedings to enforce its rights hereunder, the Bondholder shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the Project and of the revenues and receipts thereof, pending such proceedings, with such powers as the court making such appointment shall confer.

10.5 Remedies Not Exclusive. No remedy conferred upon or reserved to the Bondholder by this Agreement is intended to be exclusive of any other remedy. Each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Bondholder hereunder or now or hereafter existing at law or in equity or by statute.

10.6 Termination of Proceedings. In case any proceeding taken by the Bondholder on account of any Event of Default shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Bondholder, then the Issuer, the Company, GWI and the Bondholder shall be restored to their former positions and rights hereunder, and all rights, remedies and powers of the Bondholder shall continue as if no such proceeding had been taken.

10.7 Waiver and Non-Waiver of Event of Default. The Holder of the Bonds may waive any Event of Default, but no such waiver shall extend to or affect any other existing or any subsequent Event of Default. No delay or omission of the Holder of the Bonds to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every

power and remedy given by this Section 10 to the Holder of the Bonds may be exercised from time to time and as often as may be deemed expedient.

10.8 Waiver of Redemption Rights. Upon the occurrence and continuance of an Event of Default, to the extent that such rights may then lawfully be waived, neither the Issuer, the Company, nor anyone claiming through or under either of them, shall set up, claim, or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement of this Agreement or a foreclosure under the Security Agreement. The Issuer and the Company, each for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all rights of appraisement and redemption to which it may be entitled under the laws of the State of New York.

SECTION 11. DEFINITIONS

For the purposes of this Agreement, the following words and terms shall have the respective meanings set forth as follows:

11.1 "Affiliate", as to any Person, means a Person (a) which directly or indirectly through one or more intermediaries controls, or is controlled by, or is under common control with, such Person, (b) which beneficially owns or holds 5% or more of any class of the Voting Stock of such Person or (c) 5% or more of the Voting Stock (or in the case of a Person which is not a corporation, 5% or more of the equity interest) of which is beneficially owned or held by such Person or a Subsidiary. The term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

11.2 "Audited 1979 Financial Statement" means the consolidated financial statements of GWI and its consolidated subsidiaries as of December 31, 1979, accompanied by an opinion thereon by Price Waterhouse & Co., independent certified public accountants, which has been delivered to the Purchaser, together with the supplementary information contained therein.

11.3 "Authorized Representative" means, in the case of the Issuer, the Chairman or the Secretary of the Issuer; in the case of the Company, its chief executive officer, its president or any vice-president; in the case of GWI, its president, any vice-president or the treasurer; and such additional persons as, at the time, are designated to act on behalf of the Issuer, the Company or GWI, as the case may be, by written certificate furnished to the Issuer and/or the Company and/or GWI, as the case may be, and the Purchaser, containing the specimen signature of each such person and signed on behalf of (i) the Issuer by the Chairman or the Secretary of the Issuer, (ii) the Company by the chief executive officer, the president or any vice-president of the Company and (iii) GWI by the president, any vice-president or the treasurer of GWI.

11.4 "Bondholder" or "Holder", at any time, means the financial institution or other institutional investor (which term shall include the trustee of a pension or profit-sharing trust) who shall be the registered owner of the Bonds at such time.

11.5 "Bond Payment Date" means each date on which interest or both principal and interest shall be payable on any of the Bonds according to their respective terms so long as any of the Bonds shall be outstanding.

11.6 "Code" means the Internal Revenue Code of 1954, as amended.

11.7 "costs of the Project" means the costs and items of expense with respect to the Project enumerated in Section 4.3(a) of the Lease.

11.8 "Debt Service Payment" means, with respect to any Bond Payment Date, (i) the interest payable on such Bond Payment Date on all Bonds then outstanding, plus (ii) the principal, if any, payable on such Bond Payment Date on all such Bonds, plus (iii) the premium, if any, payable on such Bond Payment Date on all such Bonds, plus (iv) the Sinking Fund Installments, if any, payable on such Bond Payment Date with respect to all such Bonds.

11.9 "Default" means an event or condition the occurrence of which would, with the lapse of time or the giving of notice or both, become an Event of Default (as defined in Section 10.1).

11.10 "Lien" means any interest in Property securing an obligation owed to, or a claim by, a Person other than the owner of the Property, whether such interest is based on the common law, statute or contract, and including but not limited to the security interest lien arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting Property. For the purposes of this Agreement, a Person shall be deemed to be the owner of any Property which it has acquired or holds subject to a conditional sale agreement, financing lease or other arrangement pursuant to which title to the Property has been retained by or vested in some other Person for security purposes.

11.11 "Permitted Encumbrances" means the Security Agreement, the Lease and the Assignment.

11.12 "Person" means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

11.13 "Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

11.14 "Record Date" means, with respect to any Bond Payment Date, the date (whether or not a business day) fifteen days next preceding such Bond Payment Date.

11.15 "Redemption Price" means, when used with respect to a Bond, the principal amount of such Bond plus the applicable premium, if any, payable upon the redemption thereof pursuant hereto.

11.16 "Security" shall have the same meaning as in Section 2(1) of the Securities Act of 1933, as amended.

11.17 "Sinking Fund Installment" means the amount of money required to be applied, on any Bond Payment Date, to the redemption of Bonds prior to maturity pursuant to Section 4.1(a).

11.18 "Subsidiary", as to any Person, means any corporation of which such Person owns, directly or indirectly, more than 50% of the Voting Stock.

11.19 "Voting Stock" means Securities of any class or classes of a corporation the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

SECTION 12. MISCELLANEOUS

12.1 Notices. (a) All communications under this Agreement or under the Bonds shall be in writing, shall be personally delivered or mailed by first-class mail, postage prepaid, and shall be addressed as follows:

To the Purchaser:

Chemical Bank
Rochester Commercial District
800 First Federal Plaza
Rochester, New York 14614
Attention: Account Officer, Genesee
and Wyoming Railroad
Company

To the Issuer:

Livingston County Industrial Development
Agency
106 Main Street
Mt. Morris, New York 14510

To the Company:

Genesee and Wyoming Railroad Company
3846 Retsof Road
Retsof, New York 14539
Attention: President

All such communications to any Holder other than the Purchaser shall be sent to such address as such Holder shall by notice to the Company and the Issuer designate. A duplicate copy of each notice, certificate or other communication given hereunder by either the Issuer or the Purchaser or any other Holder to the other shall also be given to the Company and to Genesee and Wyoming Industries, Inc. at 71 Lewis

Street, Greenwich, Connecticut 06830, Attention: Treasurer. The Issuer, the Purchaser, any other Holder, the Company and GWI may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

(b) Any notice so addressed and mailed by registered or certified mail shall be deemed to be given when so mailed.

12.2 Survival. All warranties, representations, and covenants made by the Issuer or the Company herein or by the Issuer or the Company in any certificate or other instrument delivered by it or on its behalf under this Agreement shall be considered to have been relied upon by the Purchaser and shall survive the delivery to the Purchaser of the Bonds regardless of any investigation made by the Purchaser or on its behalf. All statements of the Issuer or the Company in any such certificate or other instrument shall constitute warranties and representations by the Issuer or the Company, as the case may be, hereunder.

12.3 Directly or Indirectly. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person, including actions taken by or on behalf of any partnership in which such Person is a general partner.

12.4 Successors and Assigns. This Agreement shall be binding upon the successors and assigns of each of the parties hereto and shall inure to the benefit of such parties (including, in the case of the Purchaser, any participant in its interest in the Bonds).

12.5 Amendment. This Agreement may not be amended, changed, modified, altered or terminated except by written instrument executed and delivered by the Issuer, the Company and the Holder of the Bonds. Any change which affects the rights or obligations of GWI under the Guaranty must be consented to by GWI.

12.6 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

12.7 Duplicate Originals. Two or more duplicate originals of this Agreement may be signed by the parties, each of which shall be an original but all of which together shall constitute one and the same instrument.

12.8 Reproduction of Documents. To the extent permitted by applicable law, this Agreement, the Security Agreement, the Lease the Assignment, the Guaranty and all documents relating hereto and thereto, including, without limitation, (a) supplements, consents, waivers and modifications which may hereafter be executed, (b) documents received by the Purchaser at the Closing of the purchase of Bonds (except the Bonds themselves) and (c) financial statements, certificates and other information previously or hereafter furnished to any Holder, may be reproduced by any Holder and any party hereto by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process, and any Holder and any party hereto may destroy any original document so reproduced. The Purchaser, the Issuer and the Company agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

12.9 Severability. If any provision of this Agreement shall, for any reason, be held or shall, in fact, be inoperative or unenforceable in any particular case, such circumstance shall not render the provision in question inoperative or unenforceable in any other case or circumstance or render any other provision herein contained inoperative or unenforceable. The invalidity of any one or more phrases, sentences, clauses, paragraphs, or sections in this Agreement shall not affect the remaining portions of this Agreement or any part thereof.

12.10 Payments Due on Saturdays, Sundays and Holidays. In any case where a Bond Payment Date or the date fixed for redemption of the Bonds or any portion thereof shall be a Saturday or Sunday or shall be, at the place designated for payment, a legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest on or principal or Redemption Price of the Bonds need not be made on such date but may be made on the next

succeeding business day not a Saturday, Sunday or a legal holiday or a day upon which banking institutions are authorized by law to close with the same force and effect as if made on such Bond Payment Date or the date fixed for redemption.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of January 1, 1981.

LIVINGSTON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By *Curtis P. Martin*
Chairman

(SEAL)

ATTEST:

J. Matthews
Secretary

GENESEE AND WYOMING RAILROAD
COMPANY

By *Gerald E. Johnson*
Title: *PRESIDENT*

(SEAL)

ATTEST:

A. F. Radesi
Assistant Secretary

CHEMICAL BANK

By *Willard Jackson*
Title: *Vice President*

(SEAL)

ATTEST:

Jeffrey L. Clark
Secretary
Assistant Vice President

STATE OF NEW YORK)
 : ss.:
COUNTY OF LIVINGSTON)

On this 23rd day of January, 1981, before me personally appeared Austin D. Morris, to me personally known, who, being by me duly sworn, did depose and say that he is the Chairman of the LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the governmental agency and instrumentality of the State of New York described in and which executed the foregoing Bond Purchase Agreement; that he knows the seal of such governmental agency and instrumentality; that the seal affixed to the foregoing Bond Purchase Agreement is the corporate seal of such governmental agency and instrumentality and that it was so affixed by order of such governmental agency and instrumentality; that he signed his name thereto on behalf of such governmental agency and instrumentality by like authority; and that the execution of the foregoing Bond Purchase Agreement was the free act and deed of such governmental agency and instrumentality.

Kathleen R. Plane (Parent)
Notary Public

KATHLEEN R. PLANE
Notary Public, State of New York
Qualified in Livingston County
My Commission Expires March 30, 1982

STATE OF NEW YORK)
 : SS.:
COUNTY OF Monroe)

On this 24th day of January, 1981, before me personally appeared Gerald E. Johnson, to me personally known, who, being by me duly sworn, did depose and say that he is the President of GENESEE AND WYOMING RAILROAD COMPANY, one of the corporations described in and which executed the foregoing Bond Purchase Agreement; that he knows the seal of such corporation; that the seal affixed to the foregoing Bond Purchase Agreement is the corporate seal of such corporation and that it was so affixed by authority of its Board of Directors; that he signed his name thereto on behalf of such corporation by like authority; and that the execution of the foregoing Bond Purchase Agreement was the free act and deed of such corporation.

Wallace F. Baker
Notary Public

WALLACE F. BAKER
NOTARY PUBLIC, State of N.Y., Monroe Co.
My Comm. Expires March 30, 1982

STATE OF NEW YORK)
 : SS.:
COUNTY OF New York)

On this 22nd day of January, 1981, before me personally appeared Willard Jackson, to me personally known, who, being by me duly sworn, did depose and say that he is the Vice President of CHEMICAL BANK, one of the corporations described in and which executed the foregoing Bond Purchase Agreement; that he knows the seal of such corporation; that the seal affixed to the foregoing Bond Purchase Agreement is the corporate seal of such corporation and that it was so affixed by authority of its Board of Directors; that he signed his name thereto by like authority; and that the execution of the foregoing Bond Purchase Agreement was the free act and deed of such corporation.

Howard Breslow
Notary Public

HOWARD BRESLOW
Notary Public, State of New York
No. 51-512402
Qualified in New York County
Commission Expires March 30, 1982

EXHIBIT A
to
Bond Purchase Agreement

FORM OF
SECURITY AGREEMENT

SECURITY AGREEMENT

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a Governmental agency and instrumentality, constituting a public benefit corporation, of the State of New York (herein called the "Debtor") having its place of business at 106 Main Street, Mt. Morris, New York, in consideration of the purchase by the Secured Party (as hereinafter defined) of \$1,000,000 principal amount of the Debtor's 9.75% 1981 Industrial Development Revenue Bonds (Genesee and Wyoming Railroad Company Facility) due January 1, 1996 (herein called the "Bonds") pursuant to the Bond Purchase Agreement dated as of January 1, 1981 among Genesee and Wyoming Railroad Company (herein called the "Company"), the Debtor and the Secured Party (herein, as the same may be amended, modified or supplemented, called the "Bond Purchase Agreement") and for other valuable consideration, receipt whereof is hereby acknowledged, hereby grants to CHEMICAL BANK, a New York banking corporation, its successors and assigns (herein called the "Secured Party") a security interest in each of the two (2) General Motors EMD MP15DC diesel locomotives described in Schedule I hereto, including all accessories, equipment parts and appurtenances appertaining or attached to either or both of them and all substitutions, renewals or replacements of and additions, improvements, accessions and accumulations to either or both of them except such thereof as shall be the property of the Company as provided in Section 6.2 of the Lease Agreement dated as of January 1, 1981 between the Debtor and the Company (herein called the "Lease"), together with all of the proceeds and products of any of the foregoing (herein called the "Collateral"), located on the main line railroad track of the Company between Greigsville, Retsof and Caledonia in Livingston County, New York, and in Monroe County, New York, to secure the payment and performance of all liabilities and obligations of the Debtor to the Secured Party hereunder and also any and all other liabilities and other obligations of the Debtor to the Secured Party of every kind and description, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, contained in the Bond Purchase Agreement and in the Bonds issued to the Secured Party under the Bond Purchase Agreement, subject to the limitations set forth in Section 9.3 of the Bond Purchase Agreement (all such liabilities and obligations herein called the "Obligations").

The Debtor hereby agrees with the Secured Party as follows:

1. Representations, Warranties and Covenants. The Debtor represents, warrants and covenants as follows:

(a) Except for the security interest granted hereby, the Debtor is, and as to Collateral to be acquired after the date hereof shall be, the lawful owner of the Collateral free from any lien, security interest or encumbrance, except for Permitted Encumbrances, as defined in the Bond Purchase Agreement, and has, and shall have, good right to pledge, sell, assign and transfer the same and grant a security interest therein.

(b) The Collateral shall be used for business purposes, shall be operated in Livingston and Monroe Counties, New York, but shall be operated substantially on the main line railroad track of the Company between Greigsville, Retsof and Caledonia in Livingston County, New York.

(c) The Debtor shall (i) defend the Collateral against claims and demands of all persons; (ii) not remove any of the Collateral from the State of New York at any time; (iii) not remove any of the Collateral from the location referred to in the preceding subparagraph without 15 days' prior written notice to the Secured Party setting forth the location to which such Collateral is to be removed; (iv) not make or consent to any change in the Lease without the prior written consent of the Secured Party; and (v) not sell, assign, pledge, mortgage, create or suffer to exist a security interest (other than Permitted Encumbrances) in the Collateral in favor of any person other than the Secured Party without the prior written consent of the Secured Party.

(d) The Debtor shall cause the Collateral to be insured as provided in Article VI of the Lease. The Debtor hereby assigns to the Secured Party all sums not used pursuant to Section 7.1 of the Lease to repair, replace, rebuild or restore the Collateral which become payable to the Debtor under such insurance including returned dividends and premiums as additional security for the Obligations. Should the Debtor fail to provide insurance as herein provided, the Secured Party may, at its option, provide such insurance. Any sums so paid by the Secured Party or for which it shall become obligated as the cost of such insurance shall constitute Obligations of the Debtor hereunder, which the Debtor shall repay to the Secured Party on demand.

(e) The Debtor at all times shall (i) keep the Collateral free from any lien, security interest or encumbrance

(other than Permitted Encumbrances); (ii) keep the Collateral, or cause the Collateral to be kept, in good working order and repair, ordinary wear and obsolescence excepted, and shall not waste or destroy, or permit the waste or destruction of, same; and (iii) prevent the Collateral from being attached, from being used in violation of any statute or ordinance and from being misused or abused.

(f) The Debtor will pay promptly when due all taxes and assessments upon the Collateral or for its use or operation or upon this Agreement or arising in connection with the issuance of the Bonds and all taxes, assessments, utility charges and other governmental charges described in Section 6.3 of the Lease. The Secured Party may, at its option, pay taxes, discharge encumbrances, and pay for insurance, repairs and maintenance of the Collateral. Any sums so paid by the Secured Party or for which it shall become obligated shall constitute Obligations of the Debtor hereunder which the Debtor shall repay to the Secured Party on demand.

(g) The Debtor shall not assert against the Secured Party any claim or defense which the Debtor may have against any seller of the Collateral or any other person with respect to the Collateral.

(h) The Debtor shall indemnify and hold the Secured Party harmless from and against any loss, liability, damage, costs and expenses whatever arising from the use, operation, ownership or possession of the Collateral.

(i) The Debtor shall immediately notify the Secured Party of any event causing loss, theft, damage, destruction or depreciation of any of the Collateral and the amount thereof.

(j) The Debtor shall take such steps and execute and deliver such financing statements and other papers as the Secured Party may from time to time request. The Debtor shall file and/or record and pay the cost of filing and/or recording such financing statements and other papers whenever and wherever filing and/or recording is deemed to be necessary or desirable by the Secured Party. No financing statement covering any of the Collateral or any proceeds thereof is on file (other than as to Permitted Encumbrances) in any public office.

(k) The Debtor, at its expense, shall do, make, execute and deliver all such additional and further acts,

things, deeds, assurances and instruments as the Secured Party may reasonably require more completely to vest in and assure to the Secured Party its rights hereunder and to the Collateral.

2. Power To Sell Or Collect Collateral. Upon the occurrence of any Event of Default (as defined in the Bond Purchase Agreement) and at any time thereafter (such Event of Default not having previously been cured), the Secured Party shall have, in addition to all other rights and remedies provided in this Agreement, the Bond Purchase Agreement and the Bonds or otherwise, the remedies of a secured party under the Uniform Commercial Code of the State of New York including, without limitation, the right to take possession of Collateral, and for that purpose the Secured Party may, so far as the Debtor can give authority therefor, enter upon any premises on which any of the Collateral may be situated and remove the same therefrom. The Secured Party may require the Debtor to assemble the Collateral and make it available to the Secured Party at a place to be designated by the Secured Party which is reasonably convenient to all parties. Unless the Collateral threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Party shall give to the Debtor at least eight (8) days' prior written notice of the time and place of any public sale of Collateral or of the time after which any private sale or any other intended disposition is to be made. The Debtor shall pay to the Secured Party on demand any and all expenses, including reasonable legal expenses and reasonable attorneys' fees, incurred or paid by the Secured Party in protecting or enforcing the Obligations and the other rights of the Secured Party under this Agreement including its rights to take possession of Collateral.

3. General. The Secured Party shall not be deemed to have waived any of its rights hereunder or under any other agreement, instrument or paper signed by the Debtor unless such waiver be in writing and signed by the Secured Party. No delay or omission on the part of the Secured Party in exercising any right shall operate as a waiver of such right or any other right. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any future occasion. All of the Secured Party's rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised singularly or concurrently. All notices to the Secured Party shall be in writing, shall be personally delivered or mailed by first-class mail, postage prepaid, shall be addressed as follows: Chemical Bank, Rochester

Commercial District, 800 First Federal Plaza, Rochester, New York 14614, Attention: Account Officer, Genesee and Wyoming Railroad Company, and shall be effective when so delivered or when so addressed and mailed. Any demand upon or notice to the Debtor that the Secured Party may elect to give shall be effective when deposited in the mails or delivered to a telegraph company addressed to the Debtor at the address referred to in the first paragraph of this Agreement. This Agreement and all rights and obligations hereunder, including matters of construction, validity and performance, shall be governed by the laws of the State of New York. Any provision of this Agreement prohibited by law shall be ineffective to the extent of such prohibition without invalidating the remaining provisions hereof. All rights of the Secured Party hereunder shall inure to the benefit of its successors and assigns. This Agreement is intended to take effect when signed by the Debtor and delivered to the Secured Party. Prior to its termination, this Agreement shall be a continuing agreement in every respect.

4. Authority To File Financing Statements. The Secured Party is hereby irrevocably authorized to file at any time a financing statement and continuation statements indicating its security interest in the Collateral, and the Debtor will execute such financing statements.

5. Termination. Upon the payment or performance of all of the Obligations, this Agreement and the security interest created hereby shall terminate, and the Secured Party will, at the expense of the Debtor, execute appropriate instruments confirming such termination and deliver such instruments to the Debtor and will, at the expense of the Debtor, execute in the same manner and deliver to the Debtor, for filing, recording, or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary or appropriate in order to make clear upon the public records the termination of this Agreement and the security interest created hereby.

Executed and delivered to the Secured Party as of January 1, 1981.

LIVINGSTON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

(SEAL)

BY

Clinton J. Morris
Chairman

ATTEST:

Matthews
Secretary

STATE OF NEW YORK)
 : ss.:
COUNTY OF LIVINGSTON)

On this 23rd day of January, 1981, before me personally appeared Austin D. Morris, to me personally known, who, being by me duly sworn, did depose and say that he is the Chairman of the LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the governmental agency and instrumentality of the State of New York described in and which executed the foregoing Security Agreement; that he knows the seal of such governmental agency and instrumentality; that the seal affixed to the foregoing Security Agreement is the corporate seal of such governmental agency and instrumentality and that it was so affixed by order of such governmental agency and instrumentality; that he signed his name thereto by like authority; and that the execution of the foregoing Security Agreement was the free act and deed of such governmental agency and instrumentality.

Kathleen R. Plane (Print)
Notary Public

KATHLEEN R. PLANE
Notary Public, State of New York
Qualified in Livingston County
My Commission Expires March 30, 1982

Schedule I
to
Security Agreement

DESCRIPTION OF EQUIPMENT COLLATERAL

<u>Number of Items</u>	<u>Description</u>	<u>Identifying Marks and Numbers (both inclusive)</u>
1	General Motors EMD MP15DC diesel locomotive	EMD796350-1, GNWR45
1	General Motors EMD MP15DC diesel locomotive	EMD796350-2, GNWR46

ACCEPTANCE

The undersigned hereby acknowledges that it has read the provisions of the foregoing Security Agreement, approves its execution by the Debtor, and agrees that it shall fulfill all the obligations imposed on the Debtor or it, by the terms of the Security Agreement and be bound by such provisions.

GENESEE AND WYOMING RAILROAD
COMPANY

By Gerald E. Johnson
Title: PRESIDENT

Dated as of January 1, 1981

(SEAL)

ATTEST:

A. F. Radesi
Assistant Secretary

STATE OF NEW YORK)
 : ss.:
COUNTY OF _____)

On this _____ day of January, 1981, before me personally appeared _____, to me personally known, who, being by me duly sworn, did depose and say that he is the _____ of GENESEE AND WYOMING RAILROAD COMPANY, the corporation described in and which executed the foregoing Acceptance; that he knows the seal of such corporation; that the seal affixed to the foregoing Acceptance is the corporate seal of such corporation and that it was so affixed by authority of its Board of Directors; that he signed his name thereto by like authority; and that the execution of the foregoing Acceptance was the free act and deed of such corporation.

Notary Public

EXHIBIT B
to
Bond Purchase Agreement

FORM OF
ASSIGNMENT

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

to

CHEMICAL BANK

PLEDGE AND ASSIGNMENT

with

ACKNOWLEDGMENT
thereof by

GENESEE AND WYOMING RAILROAD COMPANY

Dated as of January 1, 1981

PLEDGE AND ASSIGNMENT

THIS PLEDGE AND ASSIGNMENT (the "Assignment"), dated as of January 1, 1981, is from LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation duly organized and existing under the laws of the State of New York having its principal office at 106 Main Street, Mt. Morris, New York 14510 (the "Issuer"), to CHEMICAL BANK, a banking corporation duly organized and existing under the laws of the State of New York (the "Bank"), as the holder of the Issuer's 1981 Industrial Development Revenue Bond (Genesee and Wyoming Railroad Company Facility) in the principal amount of \$1,000,000 (the "Bonds") sold pursuant to a certain Bond Purchase Agreement, dated as of January 1, 1981, by and among the Issuer, Genesee and Wyoming Railroad Company (the "Company") and the Bank (the "Bond Purchase Agreement").

For value received, the receipt of which is hereby acknowledged, the Issuer hereby pledges, assigns, transfers and sets over to the Bank a security interest in its right to receive any and all moneys due or to become due and any and all other rights and remedies of the Issuer under or arising out of a Lease Agreement, dated as of January 1, 1981 (the "Agreement"), by and between the Issuer and the Company (except for the rights of the Issuer and moneys payable pursuant to Sections 5.3(b) and 8.2 of the Agreement).

The Bank shall have no obligation, duty or liability under the Agreement except as specifically set forth in the Agreement and accepted pursuant to the Acceptance hereof, nor shall the Bank be required or obligated in any manner to fulfill or perform any obligation, covenant, term or condition of the Issuer thereunder or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any other action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled hereunder at any time or times. The Issuer shall at all times remain liable to observe and perform all of its covenants and obligations under the Agreement and, subject to the limitation contained in Section 9.3 of the Bond Purchase Agreement, does hereby agree to indemnify and hold harmless the Bank from any liability, loss, damage or expense it may incur under the Agreement or by reason of this Assignment.

The Issuer hereby irrevocably constitutes and appoints the Bank its true and lawful attorney, with power of substitution for the Issuer and in the name of the Issuer or in the name of the Bank or otherwise, for the use and benefit of the Bank as holder of the Bonds, to ask, demand, require, receive, collect,

compound and give discharges and releases of all claims for any and all moneys due or to become due under or arising out of the Agreement (except for moneys due or to become due pursuant to Sections 5.3(b) or 8.2 of the Agreement) and to endorse any checks and other instruments or orders in connection therewith, and, if any "Event of Default" specified in Section 10.1 of the Bond Purchase Agreement shall occur, (a) to settle, compromise, compound and adjust any such claims; (b) to exercise and enforce any and all claims, rights, powers and remedies of the Issuer under or arising out of the Agreement (except for rights of the Issuer and moneys payable pursuant to Sections 5.3(b) and 8.2 of the Agreement); (c) to file, commence and prosecute any suits, actions and proceedings at law or in equity in any court of competent jurisdiction to collect any such sums assigned to the Bank hereunder and to enforce any rights in respect thereto and all other claims, rights, powers and remedies of the Issuer under or arising out of the Agreement (except for rights of the Issuer and moneys payable pursuant to Sections 5.3(b) and 8.2 of the Agreement); and (d) generally to sell, assign, transfer, pledge, make any agreement with respect to and otherwise deal with any of such claims, rights, powers and remedies as fully and completely as though the Bank were the absolute owner thereof for all purposes, and at such times and in such manner as may seem to the Bank to be necessary or advisable in its absolute discretion.

The Issuer further agrees that at any time and from time to time, upon the written request of the Bank, the Issuer will promptly and duly execute and deliver any and all such further instruments and documents as the Bank may deem desirable in order to obtain the full benefits of this Assignment and all rights and powers herein granted.

The Issuer hereby ratifies and confirms the Agreement and does hereby warrant and represent (a) that the Agreement is in full force and effect, (b) that the Issuer is not in default under the Agreement, and (c) that the Issuer has not assigned or pledged, and hereby covenants that it will not assign or pledge, so long as this Assignment shall remain in effect, the whole or any part of the moneys, rights or remedies hereby assigned to anyone other than the Bank.

All moneys due and to become due to the Bank under or pursuant to the Lease Agreement in accordance with the Assignment shall be paid directly to the Bank at 800 First Federal Plaza, Rochester, New York 14614, Attention: Account Officer, Genesee and Wyoming Railroad Company, or at such other address as the Bank may designate to the Company in writing from time to time.

This Assignment shall be binding upon the Issuer and its successors and assigns and shall inure to the benefit of the Bank and its successors and assigns as holders of the Bonds or any part thereof.

IN WITNESS WHEREOF, the Issuer has duly executed this Assignment as of January 1, 1981.

LIVINGSTON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By *Clinton J. Morris*
Chairman

(SEAL)

ATTEST:

J. Matthews
Secretary

STATE OF NEW YORK)
 : SS.:
COUNTY OF Livingston)

On this 23rd day of January, 1981, before me personally came Austin D. Morris, to me known, who, being by me duly sworn, did depose and say that he resides at 34 Massachusetts St., Nunda, N.Y.; that he is the Chairman of the LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation described in and which executed the within Assignment; that he knows the seal of such public benefit corporation; that the seal affixed to such Assignment is the seal of such public benefit corporation; that it was so affixed by authority of such public benefit corporation; and that he signed his name thereto by like authority.

Kathleen R. Plane (Parent)
Notary Public

KATHLEEN R. PLANE
Notary Public, State of New York
Qualified in Livingston County
My Commission Expires March 30, 1982

ACCEPTANCE

CHEMICAL BANK (the "Bank") hereby accepts the foregoing Pledge and Assignment and agrees to fulfill all the duties and obligations imposed on the Bank under the provisions of the Lease Agreement, dated as of January 1, 1981, by and between Livingston County Industrial Development Agency and Genesee and Wyoming Railroad Company, provided that the Bank shall not be obligated by reason of this Acceptance or otherwise to perform or be responsible for any duty, undertaking or obligation of the Issuer under such Lease Agreement.

IN WITNESS WHEREOF, the Bank has duly executed this Acceptance as of January 1, 1981.

CHEMICAL BANK

By _____
Title:

(SEAL)

ATTEST:

Title:

STATE OF NEW YORK)
 : ss.:
COUNTY OF)

On this ____ day of January, 1981, before me personally came _____, to me personally known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of CHEMICAL BANK, the banking institution described in and which executed the above Acceptance; that he knows the seal of such banking institution; that the seal affixed to such Acceptance is the seal of such banking institution; that it was so affixed by authority of such banking institution; and that he signed his name thereto by like authority.

Notary Public

ACKNOWLEDGMENT OF ASSIGNMENT OF
RIGHTS UNDER LEASE AGREEMENT

The undersigned hereby acknowledges receipt of notice of the pledge and assignment by Livingston County Industrial Development Agency (the "Issuer") to Chemical Bank (the "Bank") of all the Issuer's rights and remedies under a Lease Agreement (the "Agreement"), dated as of January 1, 1981, by and between the Issuer and the undersigned, including the right to collect and receive all amounts payable by the undersigned thereunder (except for certain rights and moneys payable pursuant to Sections 5.3(b) and 8.2 thereof). The undersigned, intending to be legally bound, hereby agrees with the Bank (i) to pay directly to the Bank all sums due and to become due to the Bank from the undersigned under the Agreement (except pursuant to Sections 5.3(b) and 8.2 thereof), without set-off, counterclaim or deduction for any reason whatsoever, (ii) not to seek to recover from the Bank any moneys paid to it pursuant to the Agreement, (iii) to perform for the benefit of the Bank all of the duties and undertakings of the undersigned under the Agreement, and (iv) that the Bank shall not be obligated by reason of such assignment or otherwise to perform or be responsible for the performance of any of the duties, undertakings or obligations of the Issuer under the Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of January 1, 1981.

GENESEE AND WYOMING RAILROAD COMPANY

By

Gerald E. Johnson
President

(SEAL)

ATTEST:

A. F. Radesi

Secretary

Assistant

STATE OF NEW YORK)
 : ss.:
COUNTY OF)

On this ____ day of January, 1981, before me personally came _____, to me personally known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of GENESEE AND WYOMING RAILROAD COMPANY, the corporation described in and which executed the above Acknowledgment; that he knows the seal of such corporation; that the seal affixed to such Acknowledgment is such corporate seal; that it was so affixed by authority of such corporation; and that he signed his name hereto by like authority.

Notary Public

EXHIBIT C
to
Bond Purchase Agreement

FORM OF LEASE

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

AND

GENESEE AND WYOMING RAILROAD COMPANY

LEASE AGREEMENT

Dated as of January 1, 1981

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Exhibit A

Acknowledgment by Company of Assignment

THIS LEASE AGREEMENT, dated as of January 1, 1981, by and between LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York having its office at 106 Main Street, Mt. Morris, New York 14510 (the "Issuer"), and GENESEE AND WYOMING RAILROAD COMPANY, a business corporation duly organized and existing under the laws of the State of New York and having its principal office at 3846 Retsof Road, Retsof, New York (the "Company").

W I T N E S S E T H :

WHEREAS, the Act authorizes the creation of industrial development agencies for the benefit of the several counties, cities, villages and towns in the State and empowers such agencies, among other things, to acquire, construct, reconstruct, lease, improve, maintain, equip and sell land and any building or other improvement, and all real and personal properties, including, but not limited to, machinery and equipment deemed necessary in connection therewith, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, commercial or industrial facilities, including railroad and industrial pollution control facilities, in order to advance job opportunities, health, general prosperity and the economic welfare of the people of the State and to improve their standard of living; and

WHEREAS, the Act further authorizes each such agency to lease any or all of its facilities at such rentals and on such other terms and conditions as it deems advisable, to issue its bonds for the purpose of carrying out any of its corporate purposes and, as security for the payment of the principal and redemption price of, and interest on, any such bonds so issued and any agreements made in connection therewith, to mortgage any or all of its facilities and to pledge the revenues and receipts from the leasing of its facilities; and

WHEREAS, the Issuer was created pursuant to and in accordance with the provisions of the Act and is empowered under the Act to undertake the providing, financing and leasing of the facility described below; and

WHEREAS, said facility shall be two (2) General Motors EMD MP15DC diesel locomotives (the "Facility"); and

WHEREAS, the Issuer proposes to provide the Facility and to finance the cost thereof by the issuance of its bonds; and

WHEREAS, the Issuer proposes to lease the Facility to the Company, and the Company desires to rent the Facility from the Issuer, upon the terms and conditions hereinafter set forth in this Agreement;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants hereinafter contained, the parties hereto hereby formally covenant, agree and bind themselves as follows, to wit:

ARTICLE I

DEFINITIONS

The following words and terms as used in this Lease Agreement shall have the following meanings unless the context or use indicates another or different meaning or intent:

"Accountant" means a firm of independent public accountants of recognized standing, selected by the Company.

"Act" means Title 1 of Article 18-A of the General Municipal Law of the State, as amended from time to time, together with Chapter 132 of the Laws of 1973 of the State.

"Agreement" means this Lease Agreement, dated as of January 1, 1981, by and between the Issuer and the Company, as the same may be amended from time to time.

"Assignment" means the pledge and assignment, dated as of January 1, 1981, by the Issuer to the Bank of (i) certain of the rights and remedies of the Issuer under this Agreement and (ii) certain moneys due and to become due to the Issuer hereunder.

"Authorized Representative" means, in the case of the Issuer, the Chairman or the Secretary of the Issuer; in the case of the Company, its president, Chief Executive Officer or any vice-president; and, in the case of both, such additional persons as, at the time, are designated to act on behalf of the Issuer or Company, as the case may be, by written certificate furnished to the Bank and the Issuer or Company, as the case may be, containing the specimen signature of each such person and signed on behalf of (i) the Issuer by the Chairman or the Secretary of the Issuer and (ii) the Company by the president, the Chief Executive Officer or any vice president of the Company.

"Bank" means (i) Chemical Bank, a banking corporation duly organized and existing under the laws of New York, and its successors and assigns as the owner of the Bonds, and (ii) any surviving, resulting or transferee banking institution.

"Bond" or "Bonds" means the Issuer's 1981 Industrial Development Revenue Bonds (Genesee and Wyoming Railroad Company Facility) in the aggregate principal amount of \$1,000,000 issued pursuant to the Bond Resolution and the Bond Purchase Agreement and sold to the Bank pursuant to the Bond Purchase Agreement.

"Bond Counsel" means an attorney or firm of attorneys whose experience in matters relating to the issuance of obligations by states and their political subdivisions is nationally recognized, acceptable to the Bank.

"Bond Payment Date" means each date on which interest or both principal and interest shall be payable on any of the Bonds according to their respective terms so long as any of the Bonds shall be outstanding.

"Bond Purchase Agreement" means the Bond Purchase Agreement, dated as of January 1, 1981, among the Issuer, the Company and the Bank.

"Bond Rate" at any time, means the highest rate of interest then payable on any of the Bonds.

"Bond Resolution" means the resolution of the Issuer authorizing the issuance, execution, sale and delivery of the Bonds and the execution and delivery of this Agreement, the Bond Purchase Agreement, the Security Agreement and the Assignment, as such resolution may be amended or supplemented from time to time.

"Closing Date" means the date of sale and delivery of the Bonds.

"Code" means the Internal Revenue Code of 1954, as amended, and the regulations of the Department of the Treasury promulgated thereunder.

"Company" means (i) Genesee and Wyoming Railroad Company, duly organized and existing under the laws of the State of New York, and its successors and assigns and (iii) any surviving, resulting or transferee corporation as provided in Section 8.4 hereof.

"Completion Date" means the date of completion of the Facility.

"Condemnation" means the taking of title to, or the use of, Property under the exercise of the power of eminent domain by any governmental entity or other Person acting under governmental authority.

"Cost of the Facility" means, with respect to the Facility all those costs and items of expense enumerated in Section 4.3 hereof. The term "Cost of the Facility" includes reimbursement to the Company for any of such costs or expenses paid by it.

"Debt Service Payment" means, with respect to any Bond Payment Date, (i) the interest payable on such Bond Payment Date on all Bonds then outstanding, plus (ii) the principal, if any, payable on such Bond Payment Date on all such Bonds, plus (iii) the premium, if any, payable on such Bond Payment Date on all such Bonds.

"Department" means the State Department of Environmental Conservation.

"Facility" means two (2) General Motors EMD MP15DC diesel locomotives acquired with the proceeds of any Bonds or of any payment by the Company pursuant to Section 4.4 hereof (which property is described in Exhibit A annexed to this Agreement), with such additions thereto and substitutions therefor as may exist from time to time in accordance with the provisions of this Agreement.

"Fiscal Year" means the twelve (12) month period beginning on January 1 in any year or such other fiscal year as the Company may select from time to time.

"Guarantors" means (i) the Company and (ii) Genesee and Wyoming Industries, Inc. (owner of all the outstanding stock of the Company and duly organized under the laws of the State of Delaware), and their respective successors and assigns.

"Guaranty" means the Guaranty and Indemnification Agreement by and between the Guarantors and the Bank, dated as of January 1, 1981, by which the Guarantors guarantee to the Bank the full and prompt payment, when due, of the principal or Redemption Price of, and interest on, the Bonds.

"Independent Counsel" means an attorney or attorneys or firm or firms of attorneys duly admitted to practice law before the highest court of any state of the United States of America or in the District of Columbia and not a full time employee of the Issuer, the Company or the Bank.

"Independent Engineer" means an engineer or engineering firm registered and qualified to practice the profession of engineering under the laws of the State and not a full time employee of the Issuer or the Company, selected by the Company.

"Issuer" means (i) Livingston County Industrial Development Agency and its successors and assigns, and (ii) any political subdivision or public benefit corporation resulting from or surviving any consolidation or merger to which the Issuer or its successors may be a party.

"Land" means the main line railroad track of the Company between Griegsville, Retsof and Caledonia in Livingston County, New York.

"Lease Term" means the duration of the leasehold estate created in this Agreement as specified in Section 5.2 hereof.

"Lien" means any interest in Property securing an obligation owed to a Person whether such interest is based on the common law, statute or contract, and including but not limited to the security interest arising from a mortgage, encumbrance, pledge, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" includes reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other similar title exceptions and encumbrances, including but not limited to mechanics', materialmen's, warehousemen's, carriers' and other similar encumbrances, affecting real property.

"Net Proceeds" means so much of the gross proceeds with respect to which that term is used as remain after payment of all expenses, costs and taxes (including attorneys' fees) incurred in obtaining such gross proceeds.

"Permitted Encumbrances" means this Agreement, the Assignment and the Security Agreement.

"Person" means an individual, partnership, corporation, trust or unincorporated organization, and a government or agency or political subdivision thereof.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Redemption Price" means, when used with respect to a Bond, the principal amount thereof plus the applicable premium, if any, payable upon the prior redemption thereof pursuant to the Bond Purchase Agreement.

"Related Person" means any Person constituting a "related person" within the meaning ascribed to such quoted term in Section 103(b)(6)(C) of the Code.

"Security Agreement" means the security agreement, dated as of January 1, 1981, from the Issuer to the Bank creating a first Lien on the Facility, except for Permitted Encumbrances, as security for payment of the Bonds.

"State" means the State of New York.

"Subsidiary", as to any Person, means any corporation of which such Person owns, directly or indirectly, more than 50% of the Securities (as such term is defined in Section 2(1) of the Securities Act of 1933, as amended) of any class or classes the holders of which are ordinarily, in the absence of contingencies, entitled to elect a majority of the corporate directors (or Persons performing similar functions).

"Substantial User" means any person constituting a "substantial user" within the meaning of Section 103 of the Code.

ARTICLE II

REPRESENTATIONS AND COVENANTS

Section 2.1. Representations and Covenants of the Issuer.
The Issuer makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Issuer is duly established under the provisions of the Act and has the power to enter into the transactions contemplated by this Agreement and to carry out its obligations hereunder. The Facility will constitute a "project" and a "railroad facility", as such quoted terms are defined in the Act. The Issuer has been duly authorized by proper corporate action to execute and deliver this Agreement. As a public benefit corporation of the State, the Issuer agrees that it shall not make a profit with respect to the Facility.

(b) The Issuer will acquire the Facility and will lease the Facility to the Company pursuant to this Agreement, all for the purpose of promoting the industry, health, welfare, convenience and prosperity of the inhabitants of the State and improving their standard of living.

(c) The Issuer has been induced to enter into this Agreement by the agreement of the Company to locate the Facility in Livingston County, New York, as described in paragraph (h) of Section 2.2 hereof.

(d) By resolution adopted on September 19, 1980, the Issuer took "official action" relating to the issuance of the Bonds within the meaning of Section 103 of the Code.

(e) By letter dated November 18, 1980, the Commissioner of the New York State Department of Transportation notified the Issuer of his analysis and recommendations as to the proposed project.

(f) By resolution adopted on January ___, 1981, the Issuer determined that, based upon the review by the Issuer of the materials submitted and the representations made by the Company relating to the Facility, the Facility would not have a "significant impact" on the environment within the meaning of the State Environmental Quality Review Act and the regulations of the Department promulgated thereunder.

(g) To finance the cost of acquiring the Facility, the Issuer will issue the Bonds which will mature, bear interest, be redeemable and have the other terms and provisions as set forth in the Bond Purchase Agreement and the Bonds.

Section 2.2. Representations and Covenants of the Company.
The Company makes the following representations and covenants as the basis for the undertakings on its part herein contained:

(a) The Company is a business corporation duly incorporated under the laws of the State of New York, is in good standing under its certificate of incorporation and the laws of the State of New York, has power to enter into this Agreement and by proper corporate action has been duly authorized to execute and deliver this Agreement.

(b) Neither the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby nor the fulfillment of or compliance with the provisions of this Agreement will conflict with or result in a breach of any of the terms, conditions or provisions of any corporate restriction or any agreement or instrument to which the Company is a party or by which it is bound, or will constitute a default under any of the foregoing, or result in the creation or imposition of any Lien of any nature upon any of the Property of the Company under the terms of any such instrument or agreement.

(c) The providing of the Facility by the Issuer and the leasing thereof by the Issuer to the Company will not result in the removal of a plant, facility or other commercial activity of the Company from one area of the State to another area of the State nor result in the abandonment of one or more plants or facilities of the Company located within the State.

(d) The Company will not take any action, or fail to take any action, which would (i) change the use of the Facility without the written consent of the Issuer, (ii) cause the Facility not to constitute a "project" and a "railroad facility" as such quoted terms are defined in the Act, or (iii) adversely affect the tax-exempt status of the interest payable on the Bonds then outstanding.

(e) Neither "construction" nor "acquisition" of the Facility "commenced" prior to December 4, 1980, within the meanings ascribed to such quoted terms under Section 103 of the Code.

(f) No other bonds, notes or other obligations the interest on which is, or is claimed to be, exempt from federal taxation under Section 103 of the Code are outstanding the proceeds of which have been used to finance facilities located, in whole or in part, in or near Livingston County, New York, the principal user of which is the Company or one or more Related Persons.

(g) All the proceeds of the Bonds (as determined in accordance with the provisions of Section 103 of the Code) will be used to pay the Cost of the Facility.

(h) The Facility consists entirely of Property which is of a character subject to the allowance for depreciation provided in Section 167 of the Code and will be based in Livingston County and will be operated on the Land substantially all the time and in Monroe County.

(i) No expense for supervision by any officer or employee of the Company and no expense for work done by any such officer or employee in connection with the Facility is or will be included in the Cost of the Facility, except to the extent any such officer or employee was specially employed or designated by the Company for such particular purpose.

(j) No person who will be a Substantial User of the Facility after completion thereof or a Related Person was a Substantial User of the Facility or any part or component thereof prior to December 4, 1980.

(k) No part of the Facility was "placed in service" (determined in accordance with the provisions of Section 103(b) of the Code) more than one year prior to the date of the issuance of the Bonds.

(l) The Facility shall not be used for passenger service and all conditions and approvals described in Section 854(11) of Article 18-A of the General Municipal Law of the State have been obtained or satisfied, as the case may be.

ARTICLE III

COVENANTS FOR BENEFIT OF BONDHOLDERS

Section 3.1. Covenants for Benefit of Bondholders. The Issuer and the Company agree that this Agreement is executed in part to induce the purchase by others of the Bonds. Accordingly, all covenants and agreements on the part of the Issuer and the Company set forth in this Agreement are hereby declared to be for the benefit of the holders from time to time of such Bonds.

ARTICLE IV

ACQUISITION OF THE FACILITY; ISSUANCE OF THE BONDS

Section 4.1. Acquisition of the Facility. (a) The Company agrees that, on behalf of the Issuer, it will acquire the Facility.

(b) Title to all materials, equipment, machinery and other items of Property intended to be incorporated or installed in the Facility shall vest in the Issuer immediately upon payment therefor.

(c) The Company shall execute, deliver and record or file all instruments necessary or appropriate to vest in the Issuer title to the Facility and shall take all action necessary or appropriate to protect such title against claims of any third Persons.

(d) The Issuer shall enter into, and accept the assignment of, such contracts as the Company may request in order to effectuate the purposes of this Section 4.1.

(e) The Issuer hereby appoints the Company its true and lawful agent, and the Company hereby accepts such agency, (i) to acquire the Facility, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things which may be requisite or proper, all for acquiring the Facility with the same powers and with the same validity as the Issuer could do if acting in its own behalf, (iii) to pay all fees, costs and expenses incurred in the acquisition of the Facility from funds made available therefor in accordance with this Agreement and (iv) to ask, demand, sue for, levy, recover and receive all such sums or money, debts, dues and other demands whatsoever which may be due, owing and payable to the Issuer under the terms of any contract, order, receipt, or writing in connection with the acquisition of the Facility, and to enforce the provisions of any contract, agreement, obligation, bond or other performance security.

Section 4.2. Issuance of Bonds. In order to provide funds for payment of the Cost of the Facility, together with other payments and incidental expenses in connection therewith, the Issuer agrees that it will issue, sell and cause to be delivered to the purchaser thereof \$1,000,000 aggregate principal amount of Bonds bearing interest and maturing as set forth in the Bonds and in the Bond Purchase Agreement.

Section 4.3. Application of Bond Proceeds. Bond proceeds may be applied to pay the following items of cost and expenses incurred in connection with the Facility and for no other purpose:

(a) all costs of acquiring such Facility (including architectural, engineering and supervisory services with respect thereto), and

(b) reimbursement to the Company for any of the items of cost or expenses enumerated above.

Section 4.4. Company Required to Pay Cost of Facility in Event Bond Proceeds Insufficient. If the Bond proceeds should not be sufficient to pay the Cost of the Facility in full, the Company agrees to complete the Facility and to pay all that portion of the Cost of the Facility as may be in excess of the moneys available therefor hereunder. The Issuer does not make any warranty, either express or implied, that the Bond proceeds which, under the provisions of this Agreement, will be available for payment of the Cost of the Facility, will be sufficient to pay all the costs which will be incurred in that connection. The Company agrees that if after exhaustion of the Bond proceeds the Company should pay any portion of the Cost of the Facility pursuant to the provisions of this Section, it shall not be entitled to any reimbursement therefor from the Issuer or from the Bank, nor shall it be entitled to any diminution in or postponement or abatement of the amount of the rents payable under Section 5.3 hereof. The Company shall execute, deliver and record or file such instruments as may be required by law or as the Issuer may request in order to perfect or protect the Issuer's title to the Facility including any portion completed with Company moneys pursuant to this Section.

ARTICLE V

DEMISING CLAUSES AND RENTAL PROVISIONS

Section 5.1. Demise of Facility. The Issuer hereby demises and leases the Facility to the Company and the Company hereby rents and leases the Facility from the Issuer upon the terms and conditions of this Agreement.

Section 5.2. Duration of Lease Term; Quiet Enjoyment. (a) The Issuer shall deliver to the Company sole and exclusive possession of the Facility (subject to the provisions of Section 8.3 hereof) and the leasehold estate created hereby shall commence on the Closing Date with respect to the Bonds and the Company shall accept possession of the Facility on such Closing Date.

(b) The leasehold estate created hereby shall terminate at 11:59 P.M. on January 1, 1996, or on such earlier date as may be permitted by Section 11.1 hereof; provided, however, that in no event shall this Agreement be terminated until all the Bonds shall have been paid in full or provision for such full payment shall have been made in a manner satisfactory to the holders of the Bonds.

(c) The Issuer shall take no action, other than pursuant to Article X of this Agreement, to prevent the Company from having quiet and peaceable possession and enjoyment of the Facility during the Lease Term and will, at the request of the Company and at the Company's cost, cooperate with the Company in order that the Company may have quiet and peaceable possession and enjoyment of the Facility.

Section 5.3. Rents and Other Amounts Payable. (a) The Company shall pay rent for the Facility leased hereunder as follows: on or before each Bond Payment Date, the Company, pursuant to the Assignment, shall pay rent in immediately available funds in an amount equal to the Debt Service Payment becoming due and payable on all Bonds outstanding on such Bond Payment Date, including without limitation all amounts due and payable in accordance with the provisions of the Bond Purchase Agreement or the Bonds (whether before or after the Bonds have been paid in full) as the result of the occurrence of an Event of Taxability (as defined in the Bond Purchase Agreement). All payments of rent pursuant to this Section 5.3(a) shall be made directly to the Bank.

(b) In addition to the payments of rent pursuant to Section 5.3(a) hereof, throughout the Lease Term, the Company shall pay to the Issuer as additional rent, upon receipt of demand

therefor, an amount equal to the sum of the expenses of the Issuer and the members thereof incurred (i) by reason of the Issuer's ownership, financing or leasing of the Facility and (ii) in connection with the carrying out of the Issuer's duties and obligations under this Agreement, the Bond Purchase Agreement or the Security Agreement.

(c) The Company agrees to make the above mentioned payments, without any further notice, in lawful money of the United States of America as, at the time of payment, shall be legal tender for the payment of public and private debts. In the event the Company shall fail to timely make any payment required in Sections 5.3(a) or (b) above, the Company shall pay the same together with interest thereon at the Bond Rate plus one per centum (1%) per annum from the date on which such payment was due until the date on which such payment is made.

Section 5.4. Obligations of Company Hereunder Unconditional. The obligations of the Company to make the payments required in Section 5.3 hereof and to perform and observe any and all of the other covenants and agreements on its part contained herein shall be a general obligation of the Company and shall be absolute and unconditional, irrespective of any defense or any rights of setoff, recoupment or counterclaim it may otherwise have against the Issuer. The Company agrees it will not (i) suspend, discontinue or abate any payment required by Section 5.3 hereof or (ii) fail to observe any of its other covenants or agreements in this Agreement or (iii) except as provided in Section 11.1 hereof, terminate this Agreement for any cause whatsoever including, without limiting the generality of the foregoing, failure to complete the Facility, failure of the Company to occupy or to use the Facility as contemplated in this Agreement or otherwise, any defect in the title, design, operation, merchantability, fitness or condition of the Facility or in the suitability of the Facility for the Company's purposes or needs, failure of consideration, destruction of or damage to the Facility, commercial frustration of purpose, or the taking by Condemnation of title to or the use of all or any part of the Facility, any change in the tax or other laws of the United States of America or of the State or any political subdivision of either, or any failure of the Issuer to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement. Nothing contained in this Section 5.4 shall be construed to release the Issuer from the performance of any of the agreements on its part contained in this Agreement, and in the event the Issuer should fail to perform any such agreement, the Company may institute such action against the Issuer as the Company may deem necessary to compel performance or recover damages for non-performance.

Section 5.5. Payment of Additional Moneys in Prepayment of Bonds. The Company at any time may pay moneys (in addition to any other moneys required or permitted to be paid pursuant to this Agreement) to the Bank as the prepayment of amounts to become due pursuant to Section 5.3(a) hereof to be applied to the prepayment of the Bonds at such time or times and on such terms and conditions as are provided in the Bond Purchase Agreement and the Bonds. The Company shall notify the Issuer and the Bank, in writing, as to the purpose of any such payment.

Section 5.6. Rights and Obligations of the Company upon Prepayment of Bonds. (a) In the event all the Bonds shall have been paid in full prior to January 1, 1996, the Company shall be entitled to use of the Facility from the date of such payment or provision therefor until 11:59 P.M. on January 1, 1996, without the payment of any further basic rent under Section 5.3(a) hereof, but otherwise on all of the terms and conditions hereof, except that the Company shall not be required to carry any insurance for the benefit of the Bank.

(b) The amount necessary to prepay the Bonds in full shall be determined in accordance with the provisions of Section 11.2(a)(i) of this Agreement.

Nothing contained herein shall be construed to be a waiver of any rights which the Company may have against the Issuer under this Agreement, or against other persons under this Agreement, the Bond Purchase Agreement, or otherwise, or under any provision of law.

ARTICLE VI

MAINTENANCE, MODIFICATIONS, TAXES AND INSURANCE

Section 6.1. Maintenance and Modifications of Facility by Company. (a) The Company agrees that during the Lease Term it will (i) keep the Facility in good working order and repair, ordinary wear and obsolescence excepted, (ii) not waste or destroy, or permit the waste or destruction of the Facility, (iii) prevent the Facility from being attached, from being used in violation of any statute or ordinance and from being misused or abused, and (iv) make all necessary repairs and replacements to the Facility (whether ordinary or extraordinary, structural or nonstructural, foreseen or unforeseen).

(b) The Company from time to time may make any structural additions, modifications or improvements to the Facility or any part thereof which it may deem desirable. All such structural additions, modifications or improvements so made by the Company shall become a part of the Facility. The Company agrees to deliver to the Issuer all documents which may be necessary or appropriate to convey to the Issuer title to, or other satisfactory interest in, such Property.

Section 6.2. Installation of Additional Property. The Company from time to time may install additional machinery, equipment or other personal property in, or as part of, the Facility (which may be attached or affixed to the Facility), and such machinery, equipment or other personal property shall not become, or be deemed to become, a part of the Facility. The Company from time to time may remove or permit the removal of such machinery, equipment and other personal property from the Facility and may create or permit to be created any Lien on such machinery, equipment or other personal property; provided that any such removal of such machinery, equipment or other personal property shall not adversely affect the structural integrity of the Facility or impair the overall operating efficiency of the Facility for the purposes for which it is intended and provided further that if any damage is occasioned to the Facility by such removal, the Company agrees to promptly repair such damage at its own expense.

Section 6.3. Taxes, Assessments and Utility Charges. (a) The Company agrees to pay, as the same respectively become due, (i) all taxes and governmental charges of any kind whatsoever which may at any time be lawfully assessed or levied against or with respect to (A) the Facility, (B) any machinery, equipment or other property installed or brought by the Company therein or thereon (including without limitation any sale or use taxes), (C) the employees of the Company located at or assigned to the

Facility and (D) the income or revenues of the Issuer from the Facility, (ii) any utility and other charges, including "service charges", incurred or imposed for the operation, maintenance, use, occupancy, upkeep and improvement of the Facility, and (iii) any assessments and charges of any kind whatsoever lawfully made by any governmental body for public improvements; provided that, with respect to special assessments or other governmental charges that may lawfully be paid in installments over a period of years, the Company shall be obligated under this Agreement to pay only such installments as are required to be paid during the Lease Term.

(b) The Company may in good faith contest any such taxes, assessments and other charges. In the event of any such contest, the Company may permit the taxes, assessments or other charges so contested to remain unpaid during the period of such contest and any appeal therefrom unless the Issuer or the Bank shall notify the Company that by nonpayment of any such items the Lien of the Security Agreement as to any part of the Facility will be materially endangered or the Facility or any part thereof will be subject to loss or forfeiture, in which event such taxes, assessments or charges shall be paid promptly or secured by posting a bond in form and substance satisfactory to the Issuer and the Bank.

Section 6.4. Insurance Required. At all times throughout the Lease Term, including without limitation during any period of construction of the Facility, the Company shall maintain insurance against such risks and for such amounts as are customarily insured against by businesses of like size and type paying, as the same become due and payable, all premiums in respect thereto, including, but not necessarily limited to:

(a) Insurance protecting the interests of the Company, the Bank and the Issuer, each of whom shall be named as loss payee, as their interests may appear, against loss or damage by theft, fire, lightning and other casualties, with a uniform standard extended coverage endorsement, such insurance to be in an amount not less than the full insurable value of the Facility as determined by a qualified appraiser or insurer selected by the Company. The Facility shall be appraised every five years, at the expense of the Company, by a qualified appraiser or insurer selected by the Company, in order to determine the then current replacement value of the Facility.

As an alternative to the above requirements in this subsection (a) including the requirement of periodic appraisal, the Company may insure such Property under a blanket insurance policy or policies covering not only the Facility but other Properties as well.

(b) Insurance against loss or losses from liabilities imposed by law or assumed in any written contract and arising from personal injury and death or damage to the Property of others caused by any accident or occurrence, with limits of not less than \$500,000 per accident or occurrence on account of personal injury, including death resulting therefrom, and \$250,000 per accident or occurrence on account of damage to the Property of others, excluding liability imposed upon the Company by any applicable workmen's compensation law; and a blanket excess liability policy in the amount not less than \$3,000,000, protecting the Company against any loss or liability or damage for personal injury or Property damage.

Section 6.5. Additional Provisions Respecting Insurance.

(a) All insurance required by Section 6.4 hereof shall be procured and maintained in financially sound and generally recognized responsible insurance companies selected by the Company and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged. All policies evidencing such insurance shall provide for (i) payment of the losses to the Company, the Issuer and the Bank as their respective interests may appear, and (ii) at least thirty (30) days written notice of the cancellation thereof to the Company, the Issuer and the Bank. The policies required by Section 6.4(a) hereof shall contain standard mortgagee clauses requiring that all Net Proceeds of insurance resulting from any claim in excess of \$100,000 for loss or damage covered thereby be paid to the Bank; provided, however, that all claims regardless of amount may be adjusted by the Company with the insurers, subject to approval of the Bank, which approval shall not be unreasonably withheld, as to settlement of any claim which would require payment to the Bank as aforesaid.

(b) All such policies of insurance, or a certificate or certificates of the insurers that such insurance is in force and effect, shall be deposited with the Bank on or before the Closing Date with respect to the Bonds. The Company shall deliver to the Bank on or before the first business day of each calendar year thereafter a certificate of the Company dated not earlier than the immediately preceding November 1 reciting that there is in full force and effect, with a term covering at least the next succeeding calendar year, insurance in the amounts and of the types required by Sections 6.4 and 6.5 hereof. Prior to

expiration of any such policy, the Company shall furnish the Bank evidence that the policy has been renewed or replaced or is no longer required by this Agreement.

Notwithstanding anything contained herein to the contrary, with the express written consent of the Bank, which consent shall not be unreasonably withheld, the Company shall have the option of electing to alternatively satisfy the insurance requirements of this Article VI, wholly or partially, by means of self insurance or in conjunction with other companies or through an insurance trust or other arrangement.

Section 6.6. Application of Net Proceeds of Insurance. The Net Proceeds of the insurance carried pursuant to the provisions of Section 6.4 hereof shall be applied as follows: (i) the Net Proceeds of the insurance required by Section 6.4(a) hereof shall be applied as provided in Section 7.1 hereof, and (ii) the Net Proceeds of the insurance required by Section 6.4(b) shall be applied toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.7. Right of Bank to Pay Taxes, Insurance Premiums and Other Charges. If the Company fails (i) to pay any tax, assessment or other governmental charge required to be paid by Section 6.3 hereof or (ii) to maintain any insurance required to be maintained by Section 6.4 hereof, the Bank may, but shall be under no obligation to, pay such tax, assessment or other governmental charge or the premium for such insurance. No such payment by the Bank shall affect or impair any rights of the Issuer hereunder or of the Bank under the Bond Purchase Agreement or the Security Agreement arising in consequence of such failure by the Company. The Company shall reimburse the Bank for any amount so paid by the Bank pursuant to this Section 6.7, together with interest thereon from the date of payment by the Bank at the Bond Rate plus one per centum, (1%) per annum, and such amount, together with such interest, shall become additional indebtedness secured by the Security Agreement as provided therein.

ARTICLE VII

DAMAGE, DESTRUCTION AND CONDEMNATION

Section 7.1. Damage or Destruction. (a) If the Facility shall be damaged or destroyed (in whole or in part) at any time during the Lease Term:

(i) the Issuer shall have no obligation to replace, repair, rebuild or restore the Facility;

(ii) there shall be no abatement or reduction in the amounts payable by the Company under this Agreement; and

(iii) except as otherwise provided in subsection (b) of this Section 7.1, the Company shall promptly replace, repair, rebuild or restore the Facility to substantially the same condition and value as an operating entity as existed prior to such damage or destruction, with such changes, alterations and modifications as may be desired by the Company, provided that such changes, alterations or modifications do not (x) change the intended use of the Facility as set forth in Section 2.2 or (y) so change the nature of the Facility that it does not constitute a "project" and a "railroad facility" as such quoted terms are defined in the Act or (z) adversely affect the tax-exempt status of the interest payable on the Bonds.

If the claim for loss resulting from such damage or destruction is not greater than \$100,000, the Company shall apply to the replacement, repair, rebuilding or restoration of the Facility so much as may be necessary of any Net Proceeds of insurance resulting from claims for such losses.

If the claim for loss resulting from such damage or destruction exceeds \$100,000, all Net Proceeds of insurance shall be paid to and held by the Bank in a special account. The Bank, upon receipt of a certificate of the Authorized Representative of the Company that payments are required for such purpose, shall apply so much as may be necessary of the Net Proceeds of such insurance to the payment of the costs of such replacement, repair, rebuilding or restoration, either on completion thereof or as the work progresses, at the option of the Company.

In the event such Net Proceeds are not sufficient to pay in full the costs of such replacement, repair, rebuilding or restoration, the Company shall nonetheless complete the work thereof and pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

All such replacements, repairs, rebuilding or restoration made pursuant to this Section 7.1, whether or not requiring the expenditure of the Company's own money, shall automatically become a part of the Facility as if the same were specifically described herein.

Any balance of such Net Proceeds remaining after payment of all the costs of such replacement, repair, rebuilding or restoration shall be used to prepay the Bonds in accordance with prepayment provisions specified in Section 4.1(f) of the Bond Purchase Agreement.

(b) (1) The Company shall not be obligated to replace, repair, rebuild or restore the Facility, and the Net Proceeds of the insurance shall not be applied as provided in subsection (a) of this Section 7.1, if:

(i) the Company shall exercise its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(ii) an Event of Default under Section 10.1 hereof shall have occurred and shall have continued for 30 days, or

(iii) neither paragraph (i) nor (ii) of this subsection (b)(1) of Section 7.1 is applicable, and either of the two diesel locomotives constituting the Facility shall have been damaged or destroyed to the same extent as that specified with respect to the entire Facility in Section 11.1(a)(i) hereof and the Company elects not to replace, repair, restore or rebuild such locomotive by filing with the Bank and the Issuer a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 7.1(b)(1)(iii); provided that the election set forth in this paragraph (iii) shall not be available to the Company unless an amount equal to fifty percent of the then outstanding principal amount of the Bonds (whether obtained from the Net Proceeds of insurance covering such damage or destruction or through the prepayment of rent pursuant to Section 5.5) is applied to prepay the Bonds pursuant to Section 7.1(b)(2)(z) hereof.

(2) If any event specified in this Section 7.1(b) shall occur, the total amount of (i) Net Proceeds collected under any and all policies of insurance covering the damage or destruction of the Facility or (ii) prepayments of rent pursuant to Section 7.1(b)(1)(iii), shall be paid to the Bank which shall:

(x) apply such amounts to the payment of the amounts required to be paid by Section 11.2(a) hereof, if the Company shall have exercised its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(y) apply such amounts to the payment of the amounts required to be paid by Section 10.2 hereof, if an Event of Default shall have occurred and shall have continued for 30 days, or

(z) apply such amounts to the prepayment of the Bonds pursuant to Section 4.1(f) of the Bond Purchase Agreement, if the Company shall have exercised its election pursuant to Section 7.1(b)(1)(iii) hereof.

(c) If the Bonds and interest thereon have been fully paid, all such Net Proceeds shall be paid to the Company for its corporate purposes.

Section 7.2. Condemnation. (a) If at any time during the Lease Term the whole or any part of title to, or the use of, the Facility shall be taken by Condemnation, the Issuer shall have no obligation to restore or replace the Facility and there shall be no abatement or reduction in the amounts payable by the Company under this Agreement.

Except as otherwise provided in subsection (b) of this Section 7.2, the Company shall promptly:

(i) restore the Facility to substantially the same condition and value as an operating entity as existed prior to such Condemnation; or

(ii) acquire facilities of substantially the same nature and value as an operating entity as the Facility ("Substitute Facilities"). Such Substitute Facilities shall (x) constitute a "project" and "railroad facility" as such quoted terms are defined in the Act, (y) not adversely affect the tax-exempt status of the interest payable on the Bonds, and (z) be subject to no Liens prior to the Lien of the Security Agreement, other than Permitted Encumbrances.

The Net Proceeds of any award in any Condemnation proceeding shall be paid to and held by the Bank in a special account. The Bank, upon receipt of a certificate of the Authorized Representative of the Company that payments are required for such purpose, shall apply so much as may be necessary of such Net Proceeds to the payment of the costs of the restoration of the Facility or the acquisition of Substitute Facilities, either on completion thereof or as the restoration or acquisition progresses, at the option of the Company.

In the event such Net Proceeds of any Condemnation award are not sufficient to pay in full the costs of such restoration of the Facility or such acquisition of Substitute Facilities, the Company shall nonetheless complete such restoration or acquisition and shall pay from its own moneys that portion of the costs thereof in excess of such Net Proceeds.

The Facility, as so restored, or the Substitute Facilities, whether or not requiring the expenditure of the Company's own moneys, shall automatically become part of the Facility as if the same were specifically described herein.

Any balance of such Net Proceeds of any Condemnation award remaining after payment of all costs of such restoration or acquisition shall be used to prepay the Bonds in accordance with the prepayment provisions specified in Section 4.1(f) of the Bond Purchase Agreement.

(b) The Company shall not be obligated to restore the Facility or acquire Substitute Facilities, and the Net Proceeds of any Condemnation award shall not be applied as provided in Section 7.2(a), if:

(i) the Company shall exercise its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(ii) an Event of Default under Section 10.1 hereof shall have occurred and shall have continued for 30 days.

If any event specified in this Section 7.2(b) shall occur, the Net Proceeds of any Condemnation award shall be paid to the Bank which shall:

(x) apply such Net Proceeds to the payment of the amounts required to be paid by Section 11.2(a) hereof, if the Company shall have exercised its option to terminate this Agreement pursuant to Section 11.1 hereof, or

(y) apply such Net Proceeds to the payment of the amounts required to be paid by Section 10.2 hereof, if an Event of Default shall have occurred and shall have continued for 30 days.

(c) If the Bonds and interest thereon have been fully paid, all such Net Proceeds shall be paid to the Company for its corporate purposes.

(d) The Issuer shall cooperate fully with the Company in the handling and conduct of any Condemnation proceeding with respect to the Facility. In no event shall the Issuer voluntarily settle, or consent to the settlement of, any Condemnation proceeding with respect to the Facility without the written consent of the Company.

Section 7.3. Condemnation of Company-Owned Property. The Company shall be entitled to the proceeds of any Condemnation award or portion thereof made for damage to or taking of any Property which, at the time of such damage or taking, is not part of the Facility.

ARTICLE VIII

SPECIAL COVENANTS

Section 8.1 No Warranty of Condition or Suitability by the Issuer. THE ISSUER MAKES NO WARRANTY, EITHER EXPRESS OR IMPLIED, AS TO THE CONDITION, TITLE, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS OF THE FACILITY OR THAT IT IS OR WILL BE SUITABLE FOR THE COMPANY'S PURPOSES OR NEEDS.

Section 8.2. Hold Harmless Provisions. The Company hereby releases the Issuer from, agrees that the Issuer shall not be liable for and agrees to indemnify and hold the Issuer harmless from and against any and all (i) liability for loss or damage to Property or injury to or death of any and all persons that may be occasioned by any cause whatsoever pertaining to the Facility or arising by reason of or in connection with the occupation or the use thereof or the presence on, in or about the Facility or (ii) liability arising from or expense incurred by the Issuer's financing, renovation, owning and leasing of the Facility, including without limiting the generality of the foregoing, all claims arising from (x) the acquisition of title by the Issuer to the Facility or (y) the exercise by the Company of the authority conferred upon it pursuant to Section 4.1(e) of this Agreement, and all causes of action and attorneys' fees and any other expenses incurred in defending any suits or actions which may arise as a result of any of the foregoing, provided that any such losses, damages, liabilities or expenses of the Issuer are not incurred or do not result from the intentional or willful wrongdoing of the Issuer or any of its members, agents or employees.

Section 8.3. Right to Inspect the Facility. The Issuer, the Bank and the duly authorized agents of either of them shall have the right at all reasonable times to inspect the Facility.

Section 8.4. Sale of Assets or Merger. Neither the Company nor any Subsidiary will, except upon the consent of the Bank, which consent shall not be unreasonably withheld:

(a) sell, lease, transfer or otherwise dispose of any of its Properties except in the ordinary course of business; or

(b) consolidate with or merge into any other Person or permit any other Person to consolidate with or merge into it (except that a Subsidiary may consolidate with or merge into the Company or another Subsidiary).

Section 8.5. Qualification in the State. Throughout the Lease Term, the Company shall continue to be duly authorized to do business in the State.

Section 8.6. Agreement to Provide Information. The Company agrees, whenever requested by the Issuer or the Bank, to provide and certify or cause to be provided and certified such information concerning the Company, its finances, and other topics as the Issuer or the Bank from time to time reasonably considers necessary or appropriate, including, but not limited to, such information as to enable it to make any reports required by law, governmental regulation, the Security Agreement, the Assignment, or the Bond Purchase Agreement.

Section 8.7. Books of Record and Account; Financial Statements. The Company agrees to maintain proper accounts, records and books in which full and correct entries shall be made, in accordance with generally accepted accounting principles, of all business and affairs of the Company, which accounts, books and records may be consolidated for accounting purposes with the accounts, books and records of Genesee and Wyoming Industries, Inc. and its other Subsidiaries.

Section 8.8. Compliance With Orders, Ordinances, Etc. (a) The Company agrees that it will, throughout the Lease Term, promptly comply with all statutes, codes, laws, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of all federal, state, county, municipal and other governments, departments, commissions, boards, companies or associations insuring the premises, courts, authorities, officials and officers, foreseen or unforeseen, ordinary or extraordinary, which now or at any time hereafter may be applicable to the Facility or any part thereof, or to any use, manner of use or condition of the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.8, the Company may in good faith contest the validity or the applicability of any requirement of the nature referred to in such subsection (a). In such event, the Company may fail to comply with the requirement or requirements so contested during the period of such contest and any appeal therefrom, unless the Issuer or the Bank shall notify the Company that by failure to comply with such requirement or requirements the Lien of the Security Agreement as to any part of the Facility may be materially endangered or the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly take such action with respect thereto as shall be satisfactory to the Bank.

Section 8.9. Discharge of Liens and Encumbrances. (a) The Company shall not permit or create or suffer to be permitted or created any Lien, except for Permitted Encumbrances, upon the Facility or any part thereof by reason of any labor, services or materials rendered or supplied or claimed to be rendered or supplied with respect to the Facility or any part thereof.

(b) Notwithstanding the provisions of subsection (a) of this Section 8.9, the Company may in good faith contest any such Lien. In such event, the Company may permit the items so contested to remain undischarged and unsatisfied during the period of such contest and any appeal therefrom, unless the Issuer shall notify the Company that by nonpayment of any such item or items the Lien of the Security Agreement may be materially endangered or the Facility or any part thereof may be subject to loss or forfeiture, in which event the Company shall promptly secure payment of all such unpaid items by filing the requisite bond, thereby causing such Lien to be removed.

Section 8.10. Identification of Property. All Property which is or may become the property of the Issuer pursuant to the provisions of this Agreement shall be properly identified by the Company by such appropriate records, including computerized records, as shall be selected by the Company.

Section 8.11. Tax Covenant. The Company further covenants and agrees to fully comply, during the term of this Agreement, with all effective rules, rulings or regulations promulgated by the Department of Treasury or the Internal Revenue Service with respect to bonds issued under said Section 103(b)(6)(A) of the Code so as to maintain the tax-exempt status of the interest on the Bonds.

Section 8.12. Depreciation Deductions and Investment Tax Credit. The parties agree that as between them the Company shall be entitled to all depreciation deductions with respect to any depreciable property in the Facility pursuant to Section 167 of the Code and to any investment credit pursuant to Section 38 of the Code with respect to any portion of the Facility which constitutes "Section 38 Property".

Section 8.13. Covenant against Arbitrage Bonds. Notwithstanding any other provision of this Agreement, so long as any of the Bonds shall be outstanding, neither the Issuer nor the Company shall use, or permit the use of, the proceeds of any Bonds or any other moneys within their respective control (including without limitation the proceeds of any insurance or any Condemnation award with respect to the Facility) which, if such use had been reasonably expected on the date of issue of such Bonds, would cause such Bonds to be "arbitrage bonds" within the meaning of such quoted term in Section 103(c) of the Code.

ARTICLE IX

ASSIGNMENTS AND SUBLEASING; PLEDGE OF INTERESTS

Section 9.1. Restriction on Sale of Facility. Except as otherwise specifically provided in this Article IX and in Article X hereof, the Issuer shall not sell, convey, transfer, encumber or otherwise dispose of the Facility or any part thereof or any of its rights under this Agreement, without the prior written consent of the Company and the Bank.

Section 9.2. Removal of Portions of the Facility. (a) The Issuer shall not be under any obligation to remove, repair or replace any inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary item of the Facility. In any instance where the Company determines that any immaterial item of the Facility has become inadequate, obsolete, worn out, unsuitable, undesirable or unnecessary, the Company may remove such item and sell, trade-in, exchange or otherwise dispose of the same, as a whole or in part, free from the Lien of the Security Agreement, provided that:

(1) such removal will not materially impair the efficient operation of the Facility for the purpose for which it is intended, and

(2) the Company shall either

(a) substitute for such removed item other related property having equal or greater value in the operation of the Facility (but not necessarily having the same function) all of which substituted related property shall be free of all Liens, other than Permitted Encumbrances, and shall become a part of the Facility; or

(b) not make any such substitution provided (i) that in the case of the sale of any such item (other than to itself) or in the case of the scrapping thereof, the Company shall pay to the Bank the proceeds from such sale or the scrapping thereof, as the case may be, or (ii) that in the case of the trade-in of such removed item for other related Property not to be installed in the Facility, the Company shall pay to the Bank an amount of money equal to the credit received by it in such trade-in, or (iii) that in the case of the sale of any such removed item to the Company or in the case of any other disposition thereof, the Company shall pay to the Bank an amount of money equal to its

fair market value at the time of sale or other disposition. Any moneys paid to the Bank pursuant to this Section 9.2(a)(2)(b) shall be used to prepay the Bonds in accordance with Section 4.1(f) of the Bond Purchase Agreement.

(b) The Company shall promptly report to the Bank each such removal, sale and other disposition of any item having a value of more than \$50,000 and shall promptly make the substitution required by Section 9.2(a)(2)(a) or shall promptly pay such amounts as are required to be paid by Section 9.2(a)(2)(b); provided that no such payment need be made until the amount to be paid pursuant to Section 9.2(a)(2)(b) aggregates at least \$500,000 and thereafter no further payment need be made until such amount again aggregates at least \$500,000. The Issuer shall execute and deliver, and shall direct the Bank to execute and deliver, to the Company all instruments necessary or appropriate to enable the Company to sell or otherwise dispose of the same free from the Lien of the Security Agreement. The Company shall pay any costs (including counsel fees) incurred in transferring title to and releasing from the Lien of the Security Agreement any item of the Facility removed pursuant to this Section 9.2.

(c) The removal of any item of Property pursuant to this Section 9.2 shall not entitle the Company to any abatement or diminution of the rents payable under Section 5.3 hereof.

Section 9.3. Assignment and Subleasing. (a) This Agreement may not be assigned in whole or in part and the Facility may not be subleased as a whole or in part by the Company without the consent of the Issuer and the Bank.

Section 9.4. Security Interest and Pledge of Issuer's Interests to Bank. Pursuant to the Security Agreement and the Assignment, the Issuer shall (i) grant a security interest in its interest in the Facility and (ii) pledge and assign certain of its rights to and interest in amounts payable by the Company pursuant to Section 5.3 hereof and all other provisions of this Agreement (except pursuant to Section 5.3(b) and 8.2 hereof), to the Bank as security for the payment of the principal of, premium, if any, and interest on the Bonds. The Company hereby consents to such grant, pledge and assignment by the Issuer.

Section 9.5. Merger of Issuer. (a) Nothing contained in this Agreement shall prevent the consolidation of the Issuer with, or merger of the Issuer into, or transfer of title to the Facility as an entirety to, any other public benefit corporation or political subdivision which has the legal authority to own and lease the Facility, provided that:

(1) the tax-exempt status of the interest on the Bonds shall not be adversely affected thereby, and

(2) upon any such consolidation, merger or transfer, the due and punctual performance and observance of all the agreements and conditions of this Agreement, the Assignment and the Security Agreement to be kept and performed by the Issuer shall be expressly assumed in writing by the public benefit corporation or political subdivision resulting from such consolidation or surviving such merger or to which the Facility shall be transferred.

(b) Within thirty (30) days after the consummation of any such consolidation, merger or transfer of title, the Issuer shall give notice thereof in reasonable detail to the Company and the Bank. The Issuer promptly shall furnish such additional information with respect to any such transaction as the Company or the Bank reasonably may request.

ARTICLE X

EVENTS OF DEFAULT AND REMEDIES

Section 10.1. Events of Default Defined. (a) The following shall be "Events of Default" under this Agreement and the terms "Event of Default" or "Default" shall mean, whenever they are used in this Agreement, any one or more of the following events:

(1) The failure by the Company to pay or cause to be paid, (i) at the times required, that portion of the amounts specified to be paid pursuant to Section 5.3(a) hereof, to be applied to payment of interest on the Bonds or (ii) at the times required, that portion of the amounts specified to be paid pursuant to Section 5.3(a) hereof to be applied to the payment of principal on the Bonds, or (iii) at the times required, any amount required to be paid pursuant to Section 5.3(b) hereof or pursuant to the Bond Purchase Agreement;

(2) The failure by the Company to observe and perform any covenant contained in Section 8.4 hereof;

(3) The failure by the Company to observe and perform any covenant, condition or agreement under the Bond Purchase Agreement, the Acceptance, the Bonds or hereunder on its part to be observed or performed (except obligations referred to in Sections 10.1(a)(1) and (2) hereof) for a period of thirty (30) days after written notice specifying such failure and requesting that it be remedied, given to the Company by the Issuer or the Bank;

(4) Any warranty, representation or other statement by or on behalf of the Company contained in this Agreement or the Bond Purchase Agreement, or in any instrument furnished in compliance with or in reference to this Agreement or the Bond Purchase Agreement or in connection with the issuance of the Bonds, shall have been false or misleading in any material respect when made; or

(5) With respect to either of the Guarantors in the Guaranty, the occurrence of any of the following events:

(i) The failure by either of the Guarantors to perform or observe any covenant contained in Sections 1 or 2 of the Guaranty;

(ii) The failure by either of the Guarantors to comply with any other provision of the Guaranty, and such failure continues for more than thirty (30) days after the earlier of knowledge by either of the

Guarantors or written notice of such failure has been given to either of the Guarantors;

(iii) Any warranty, representation or other statement by or on behalf of either of the Guarantors contained in the Guaranty or in any instrument furnished in connection with the Guaranty shall have been false or misleading in any material respect when made;

(6) The occurrence of an Event of Default under the Bond Purchase Agreement.

(b) Notwithstanding the provisions of Section 10.1(a), if by reason of force majeure either party hereto shall be unable in whole or in part to carry out its obligations under this Agreement and if such party shall give notice and full particulars of such force majeure in writing to the other party and to the Bank within a reasonable time after the occurrence of the event or cause relied upon, the obligations under this Agreement of the party giving such notice so far as they are affected by such force majeure, shall be suspended during the continuance of the inability, which shall include a reasonable time for the removal of the effect thereof. The suspension of such obligations for such period pursuant to this subsection (b) shall not be deemed an Event of Default under this Section 10.1. Notwithstanding anything to the contrary in this subsection (b), an event of force majeure shall not excuse, delay or in any way diminish the obligations of the Company to make the payments required by Section 5.3 and Section 6.3 hereof, to obtain and continue in full force and effect the insurance required by Section 6.4 hereof, to provide the indemnity required by Section 8.2 hereof, or to make any payments required pursuant to the Bond Purchase Agreement, nor shall it relieve the Guarantors from making any payment under the Guaranty. The term "force majeure" as used herein shall include, without limitation, acts of God, strikes, lockouts or other industrial disturbances, acts of public enemies, orders of any kind of the government of the United States of America or of the State or any of their departments, agencies, governmental subdivisions, or officials, or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fire, hurricanes, storms, floods, washouts, droughts, arrests, restraint of government and people, civil disturbances, explosions, breakage or accident to machinery, transmission pipes or canals, partial or entire failure of utilities, or any other cause or event not reasonably within the control of the party claiming such inability. It is agreed that the settlement of strikes, lockouts and other industrial disturbances shall be entirely within the discretion of the party having difficulty, and the party having difficulty shall

not be required to settle any strike, lockout and other industrial disturbances by acceding to the demands of the opposing party or parties.

Section 10.2. Remedies on Default. (a) Whenever any Event of Default shall have occurred and be continuing, the Issuer upon direction of the Bank or the Bank may, to the extent permitted by law, take any one or more of the following remedial steps:

(1) Declare, by written notice to the Company, to be immediately due and payable, whereupon the same shall become immediately due and payable: (i) all unpaid installments of rent payable pursuant to Section 5.3(a) hereof in an amount equal to the amount required to be paid pursuant to Section 10.2 of the Bond Purchase Agreement, and (ii) all other payments due under this Agreement.

(2) Take possession of the Facility without terminating this Agreement and without being liable for any prosecution or damages therefor, and sublease the Facility for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from the sublessee under such sublease.

(3) Terminate the Lease Term and all rights of the Company under this Agreement and, without being liable for any prosecution or damages therefor, exclude the Company from possession of the Facility and use its best efforts to lease the Facility to another Person for the account of the Company, holding the Company liable for the amount, if any, by which the aggregate of the rents and other amounts payable by the Company hereunder exceeds the aggregate of the rents and other amounts received from such other Person under the new lease.

(4) Take any other action at law or in equity which may appear necessary or desirable to collect the payments then due or thereafter to become due hereunder, to secure possession of the Facility, and to enforce the obligations, agreements or covenants of the Company under this Agreement.

(b) In the event the Facility is subleased or leased to another Person pursuant to Section 10.2(a)(2) or (3) hereof, the Issuer may (but shall be under no obligation to) make such repairs or alterations in or to the Facility as it may deem necessary or desirable for the implementation of such sublease or lease, and the Company shall be liable and agrees to pay the costs of such repairs or alterations and the expenses incidental

to the effecting of such sublease or lease, together with interest thereon at the Bond Rate plus one per centum (1%) per annum, notwithstanding that this Agreement may have been terminated pursuant to Section 10.2(a)(3) hereof.

(c) Any sums payable to the Issuer as a consequence of any action taken pursuant to Section 10.2 shall be paid to the Bank pursuant to the Assignment and shall be applied to the payment of the Bonds.

(d) No action taken pursuant to this Section 10.2 (including repossession of the Facility) shall relieve the Company from its obligation to make all payments required by Section 5.3 hereof.

Section 10.3. Remedies Cumulative. No remedy herein conferred upon or reserved to the Issuer or the Bank is intended to be exclusive of any other available remedy, but each and every such remedy shall be cumulative and in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Bank to exercise any remedy reserved to it in this Article X, it shall not be necessary to give any notice, other than such notice as may be herein expressly required in this Agreement.

Section 10.4. Agreement to Pay Attorneys' Fees and Expenses. In the event the Company should default under any of the provisions of this Agreement and the Issuer or the Bank (pursuant to the Assignment) should employ attorneys or incur other expenses for the collection of amounts payable hereunder or the enforcement of performance or observance of any obligations or agreements on the part of the Company herein contained, the Company shall, on demand therefor, pay to the Issuer and the Bank the reasonable fees of such attorneys and such other expenses so incurred.

Section 10.5. No Additional Waiver Implied by One Waiver. In the event any agreement contained herein should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

ARTICLE XI

EARLY TERMINATION OF AGREEMENT; OPTIONS IN FAVOR OF COMPANY

Section 11.1. Early Termination of Agreement. (a) If any of the following events shall occur, the Company shall have the option to terminate this Agreement prior to the termination date specified in Section 5.2 hereof upon compliance with the requirements set forth in Section 11.2 hereof:

(i) The Facility shall have been damaged or destroyed to such extent that, (a) the Facility cannot be reasonably restored within a period of four (4) consecutive months after such damage or destruction to the condition thereof immediately preceding such damage or destruction, or (b) the Company is thereby prevented or in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Issuer and the Bank within sixty (60) days after such damage or destruction), is reasonably expected to be thereby prevented from carrying on its normal operations with the Facility for a period of four (4) consecutive months after such damage or destruction, or (c) in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Issuer and the Bank within sixty (60) days after such damage or destruction), the cost of restoration of the Facility would exceed the Net Proceeds of insurance carried thereon, plus the amount for which the Company is self-insured as the result of permitted deductible amounts under Section 6.5 hereof; or

(ii) Title to, or the use of, all or any part of the Facility shall have been taken by Condemnation so that the Company is thereby prevented or, in the opinion of an Authorized Representative of the Company and of an Independent Engineer (in each case expressed in a certificate filed with the Issuer and the Bank within sixty (60) days after the date of such taking), is reasonably expected to be thereby prevented from carrying on its normal operations with the Facility for a period of four (4) consecutive months after such taking; or

(iii) Adverse changes in the economic availability of raw materials, operating supplies, energy or facilities necessary to operate the Facility or technological or other changes shall have occurred which make the continued operation of the Facility uneconomical; provided, however, that the Company provides the Issuer and the Bank a

certified resolution of the Board of Directors of the Company to the effect that, for one of the foregoing reasons, the Company has decided to abandon the Project.

(b) The Company shall have an additional option, in its sole discretion, to terminate this Agreement on or after January 1, 1986 prior to the termination date specified in Section 5.2 hereof upon filing with the Issuer and the Bank a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1(b) and stating the Company's intention to cause the Bonds to be redeemed as a whole pursuant to Section 4.1(b) of the Bond Purchase Agreement and upon compliance with the requirements set forth in Section 11.2 hereof.

(c) Following the occurrence of an Event of Taxability, as defined in the Bond Purchase Agreement, the Company shall have an additional option, in its sole discretion, to terminate this Agreement prior to the termination date specified in Section 5.2 hereof upon filing with the Issuer and the Bank a certificate signed by an Authorized Representative of the Company stating the Company's intention to do so pursuant to this Section 11.1(c) and stating the Company's intention to cause the Bonds to be redeemed as a whole, pursuant to Section 4.1(d) of the Bond Purchase Agreement and upon compliance with the requirements of Section 11.2 hereof.

Section 11.2. Conditions to Early Termination of Agreement. In the event the Company exercises its option to terminate this Agreement in accordance with any provision of Section 11.1 hereof, the Company shall comply with the requirements set forth in the following three subsections:

(a) The following payments shall be made:

(i) To the Bank for the account of the Issuer: an amount certified by the Bank which, when added to the total amount on deposit with the Bank for the account of the Issuer and the Company and available for such purpose, will be sufficient (x) to pay the amount required by Section 4.1(e) of the Bond Purchase Agreement, if such termination is pursuant to Section 11.1(a) hereof, or (y) to redeem at the price set forth in Section 4.1(b) of the Bond Purchase Agreement, at the earliest possible date in accordance with the provisions of Section 4.1(b) of the Bond Purchase Agreement, all of the then outstanding Bonds, together with all interest on such Bonds which will accrue to such redemption date, if such termination is pursuant to Section 11.1(b) hereof; or (z) to pay the amount required by Section 4.1(d) of the Bond Purchase Agreement, if such termination is pursuant to Section 11.1(c) hereof.

(ii) To the Issuer: an amount certified by the Issuer sufficient to pay all unpaid fees and expenses of the Issuer incurred under this Agreement and the Security Agreement; and

(iii) To the appropriate Person: an amount sufficient to pay all other obligations, fees, expenses or charges, if any, due and payable or to become due and payable under this Agreement, the Bond Purchase Agreement and the Security Agreement and not otherwise paid or provided for.

(b) The Company shall cause to be delivered the notice required by Section 4.2 of the Bond Purchase Agreement.

(c) Arrangements shall be made, satisfactory to the Bank, for the payment or redemption of all of the then outstanding Bonds.

Section 11.3. Option to Purchase Facility. Upon termination of the Lease Term in accordance with Section 5.2 or Section 11.1 hereof, the Company may purchase the Facility from the Issuer for the purchase price of One Dollar (\$1.00). The Company shall exercise its option to purchase by giving written notice to the Issuer and to the Bank (which may be contained in a certificate referred to in Section 11.2 hereof) (i) declaring the Company's election to purchase, and (ii) fixing the date of closing such purchase, which shall be the date on which this Agreement is to be terminated.

Section 11.4. Conveyance on Exercise of Option to Purchase. At the closing of any purchase of the Facility pursuant to Section 11.3 hereof, the Issuer shall, upon receipt of the purchase price, deliver and direct the Bank to deliver to the Company all necessary documents (a) to convey to the Company good and marketable title to the Property being purchased, as such Property exists, subject only to the following: (i) any Liens to which title to such Property was subject when conveyed to the Issuer, (ii) any Liens created at the request of the Company or to the creation of which the Company consented or in the creation of which the Company acquiesced, (iii) any Permitted Encumbrances (other than the Lien of the Security Agreement), and (iv) any Liens resulting from the failure of the Company to perform or observe any of the agreements on its part contained in this Agreement, and (b) to release and convey to the Company all of the Issuer's rights and interest in and to any rights of action or any Net Proceeds of insurance or Condemnation awards with respect to the Facility.

Section 11.5. Amounts Remaining on Deposit with the Bank upon Payment of Bonds. After payment in full of the Bonds and the interest thereon and payment of all fees, charges, expenses and other amounts required to be paid under this Agreement, the Bond Purchase Agreement and the Security Agreement, all amounts on deposit with the Bank for the account of the Issuer and the Company under this Agreement, the Bond Purchase Agreement and the Security Agreement, if any, shall belong to and, at the request of the Company, shall be paid to the Company by the Bank.

ARTICLE XII

MISCELLANEOUS

Section 12.1. Surrender of Facility. Except as otherwise expressly provided in this Agreement, at the termination of the Lease Term the Company shall surrender possession of the Facility peaceably and promptly to the Issuer in as good condition as at the commencement of the Lease Term, loss by fire or other casualty covered by insurance, Condemnation and ordinary wear, tear and obsolescence only excepted.

Section 12.2. Notices. All notices, certificates and other communications hereunder shall be in writing and shall be sufficiently given and shall be deemed given when delivered and, if delivered by mail, shall be sent by registered mail, postage prepaid, addressed as follows:

To the Issuer: Livingston County Industrial
Development Agency
106 Main Street
Mt. Morris, New York 14510

To the Company: Genesee and Wyoming Railroad Company
3846 Retsof Road
Retsof, New York 14539
Attention: President

To the Bank: Chemical Bank, Rochester Commercial District
800 First Federal Plaza
Rochester, New York 14614
Attention: Account Officer, Genesee and
Wyoming Railroad Company

A duplicate copy of each notice, certificate and other communication given hereunder by either the Issuer or the Company to the other shall also be given to the Bank and to Genesee and Wyoming Industries, Inc. at 71 Lewis Street, Greenwich, Connecticut 06830, Attention: Treasurer. The Issuer, the Guarantors and the Bank may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates and other communications shall be sent.

Section 12.3. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Company and their respective successors and assigns.

Section 12.4. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 12.5. Amendments, Changes and Modifications. This Agreement may not be amended, changed, modified, altered or terminated without the concurring written consent of the Bank.

Section 12.6. Execution of Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 12.7. Applicable Law. This Agreement shall be governed exclusively by the applicable laws of the State.

Section 12.8. Recording and Filing. (a) This Agreement, the Assignment, the Bond Purchase Agreement and the Security Agreement and, to the extent provided by law, financing statements perfecting the security interest of the Issuer in the Facility and in all amounts payable hereunder shall be recorded or filed, as the case may be, in the Office of the Clerk of Livingston County, New York, and the Office of the Commissioner of the United States Interstate Commerce Commission, or in such other office as may at the time be provided by law as the proper place for the recordation or filing thereof.

(b) Upon completion of the Facility, the Company shall prepare a schedule listing all items constituting the Facility not previously described in this Agreement. If requested by the Issuer or the Bank, the Company shall thereafter furnish to the Issuer and the Bank, within sixty (60) days after the end of each calendar year, a schedule listing all items of the Facility not theretofore previously described herein.

(c) The Issuer and the Company shall execute and deliver all instruments and shall furnish all information necessary or appropriate to perfect or protect any security interest created or contemplated by this Agreement, the Bond Purchase Agreement and the Security Agreement.

(d) The Issuer and the Company shall execute and deliver all instruments and shall furnish all information which the Bank may deem necessary or appropriate to protect any security interest created or contemplated by this Agreement and/or the Security Agreement.

Section 12.9. Survival of Obligations. The obligations of the Company to make the payments required by Sections 5.3(b) and (c) hereof and to provide the indemnity required by Section 8.2 hereof shall survive the termination of this Agreement and the full payment of all Bonds.

Section 12.10. Table of Contents and Section Headings not Controlling. The Table of Contents and the Headings of the several Sections in this Agreement have been prepared for convenience of reference only and shall not control, affect the meaning or be taken as an interpretation of any provision of this Agreement.

IN WITNESS WHEREOF, the Issuer and the Company have caused this Lease Agreement to be executed in their respective corporate names and their respective corporate seals to be hereunto affixed and attested by their duly authorized officers, all as of January 1, 1981.

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

(SEAL)
ATTEST:

J. Matthews
Secretary

By

Clinton J. Morris
Chairman

GENESEE AND WYOMING RAILROAD COMPANY

(SEAL)
ATTEST:

A. F. Radesi
Assistant Secretary

By

Errol E. Johnson
President

STATE OF NEW YORK)
 : SS.:
COUNTY OF LIVINGSTON)

On this 23rd day of January, 1981, before me personally came Austin D. Morris, to me known, who, being by me duly sworn, did depose and say that he resides at 34 Massachusetts St., Nunda, N.Y.; that he is the Chairman of LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, the public benefit corporation of the State of New York described in and which executed the within Lease Agreement; that he knows the seal of said public benefit corporation; that the seal affixed to said Lease Agreement is the seal of such public benefit corporation; that it was so affixed by authority of such public benefit corporation and that he signed his name thereto by like authority.

Kathleen R. Plave (Parent)
Notary Public

Kathleen R. Plave
Notary Public, State of New York
Qualified in Livingston County 82
My Commission Expires March 30, 1985

STATE OF NEW YORK)
 : SS.:
COUNTY OF _____)

On this _____ day of January, 1981, before me personally came _____, to me personally known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of GENESEE AND WYOMING RAILROAD COMPANY, the corporation described in and which executed the within Lease Agreement; that he knows the seal of said corporation; that the seal affixed to said Lease Agreement is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name thereto by like order.

Notary Public

EXHIBIT A
to
LEASE AGREEMENT

DESCRIPTION OF EQUIPMENT COLLATERAL

<u>Number of Items</u>	<u>Description</u>	<u>Identifying Marks and Numbers (both inclusive)</u>
1	General Motors EMD MP15DC diesel locomotive	EMD796350-1, GNWR45
1	General Motors EMD MP15DC diesel locomotive	EMD796350-2, GNWR46

ACKNOWLEDGMENT BY LESSEE OF ASSIGNMENT OF
LESSOR'S RIGHTS UNDER LEASE AGREEMENT

The undersigned hereby acknowledges receipt of notice of the pledge and assignment by Livingston County Industrial Development Agency (the "Issuer") of its rights and remedies under a Lease Agreement (the "Agreement"), dated as of January 1, 1981, by and between the Issuer as lessor and the undersigned as lessee, including the right to collect and receive amounts payable by the undersigned thereunder (except the moneys due or to become due to the Issuer for its own account or to the members, officers, agents and employees of the Issuer for their own account pursuant to Sections 5.3(b) and 8.2 of the Agreement), pursuant to a Pledge and Assignment (the "Assignment"), dated as of January 1, 1981, by and between the Issuer and Chemical Bank (the "Bank"). The undersigned, intending to be legally bound, hereby agrees with the Bank (i) to pay directly to the Bank all sums due and to become due from the undersigned to the Bank under the Agreement, without set-off, counterclaim or deduction for any reason whatsoever, (ii) not to seek to recover from the Bank any moneys paid to it pursuant to the Agreement or the Assignment, (iii) to perform for the benefit of the Bank all of the duties and undertakings of the undersigned under the Agreement, and (iv) that the Bank shall not be obligated by reason of the Assignment or otherwise to perform or be responsible for the performance of any of the duties, undertakings or obligations of the Issuer under the Agreement.

IN WITNESS WHEREOF, the undersigned has caused this Acknowledgment to be duly executed as of January 1, 1981.

GENESEE AND WYOMING RAILROAD COMPANY

(SEAL)

By _____
President

ATTEST:

A. F. Radesi
Assistant Secretary

STATE OF NEW YORK)
 : SS.:
COUNTY OF)

On this ____ day of January, 1981, before me personally came _____, to me personally known, who, being by me duly sworn, did depose and say that he resides at _____; that he is the _____ of GENESEE AND WYOMING RAILROAD COMPANY, the corporation described in and which executed the above Acknowledgment; that he knows the seal of said corporation; that the seal affixed to said Acknowledgment is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; and that he signed his name hereto by like order.

Notary Public

EXHIBIT D
to
Bond Purchase Agreement

FORM OF GUARANTY

GENESEE AND WYOMING INDUSTRIES, INC.,
GENESEE AND WYOMING RAILROAD COMPANY

and

CHEMICAL BANK

GUARANTY AND INDEMNIFICATION AGREEMENT

Dated as of January 1, 1981

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY

\$1,000,000 9.75% 1981 Industrial
Development Revenue Bonds

(Genesee and Wyoming Railroad Company Facility)

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EXHIBIT 1 - List of Subsidiaries and Affiliates of GWI	

AGREEMENT dated as of January 1, 1981, between GENESEE AND WYOMING INDUSTRIES, INC., a Delaware corporation (herein called "GWI"), and GENESEE AND WYOMING RAILROAD COMPANY, a New York corporation (herein called the "Company") (herein each called a "Guarantor" and together called the "Guarantors"), on the one hand, and CHEMICAL BANK, a New York banking corporation (herein called the "Bond Purchaser"), on the other hand;

W I T N E S S E T H :

WHEREAS; Livingston County Industrial Development Agency, a governmental agency and instrumentality of the State of New York, duly existing under the laws of the State of New York (the "Issuer"), intends to issue its 9.75% 1981 Industrial Development Revenue Bonds (Genesee and Wyoming Railroad Company Facility) in the aggregate principal amount of \$1,000,000 (herein, together with bonds which may be issued in exchange or substitution therefor pursuant to the Bond Purchase Agreement referred to below, collectively called the "Bonds"); and

WHEREAS, the Bonds are to be issued under and pursuant to a bond resolution duly adopted by the Issuer on January 23, 1981 (herein together with any amendments or supplements thereto called the "Resolution"), a true and complete copy of which has been delivered to the Company, and the Bond Purchase Agreement; and

WHEREAS, in order to defray the cost of acquisition, improvement and equipping by the Company of two certain diesel locomotives (herein called the "Project") to be situated and operated substantially within Livingston County, New York, the Issuer, the Bond Purchaser and the Company have entered into a Bond Purchase Agreement dated as of the date hereof (herein called the "Bond Purchase Agreement") providing for the sale to the Bond Purchaser of \$1,000,000 aggregate principal amount of the Bonds; and

WHEREAS, the proceeds derived from the sale of the Bonds are to be applied by the Issuer to the cost of the acquisition, improvement and equipping of the Project, which is to be leased to the Company pursuant to a Lease Agreement dated as of the date hereof (herein together with any supplements or amendments thereto called the "Lease"); and

WHEREAS, GWI is the owner of 100% of the issued and outstanding capital stock of the Company; and

WHEREAS, it is a condition of the obligation of the Bond Purchaser to purchase the Bonds pursuant to the Bond Purchase Agreement that this Agreement shall have been executed and delivered by the parties hereto and shall be in full force and effect; and

WHEREAS, the Guarantors are desirous that the Issuer issue the Bonds and apply the proceeds as aforesaid and enter into this Agreement as an inducement to the purchase of the Bonds;

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration and in order to enhance the marketability of the Bonds and as an inducement to the purchase of the Bonds by the Bond Purchaser and by all who shall at any time become holders thereof, each Guarantor does hereby covenant and agree as follows:

1 Guaranty. The Guarantors, jointly and severally, hereby unconditionally guarantee the punctual payment when due (whether at stated maturity, by acceleration or call for redemption or otherwise), in lawful money of the United States of America, of any and all sums which may become due at any time or from time to time on account of the principal of, and premium, if any, and interest on, all Bonds from time to time issued pursuant to the Resolution and the Bond Purchase Agreement and of any and all amounts which may become due under the terms of the Bond Purchase Agreement. If the holder of any Bond shall fail to receive any such payment when due (whether at stated maturity, by acceleration or call for redemption or otherwise) for any reason whatsoever (and irrespective of whether the Company shall have supplied funds therefor under the Lease), the Guarantors shall immediately pay an amount equal to the required payment to the Person entitled to receive such payment. If an Event of Default shall have occurred and be continuing under the Bond Purchase Agreement and the holder of the Bonds, after having made a declaration of acceleration pursuant to Section 10.2 of the Bond Purchase Agreement, is prevented from accelerating payment of the Bonds, the holder of the Bonds shall be entitled to receive hereunder from the Guarantors, upon demand therefor, the sums which would have

otherwise been due had such acceleration occurred. This guaranty is a primary and original obligation of the Guarantors and is an absolute, unconditional, continuing and irrevocable guaranty of payment and not of collectibility or performance and is in no way conditioned or contingent upon any attempt to collect from the Company or the Issuer or to realize upon any of the property subject to the lien of the Security Agreement. This guaranty shall remain in full force and effect without respect to future changes in conditions, including change in law, until all holders of the Bonds shall have been indefeasibly paid in full all sums due under the terms and provisions of the Bonds, the Bond Purchase Agreement, the Lease and this Agreement and until such sums are not subject to rescission or repayment upon the bankruptcy, insolvency, reorganization, moratorium, receivership or similar proceeding affecting the Issuer, the Company or GWI. Each default in payment of principal of, premium, if any, or interest on any Bond shall give rise to a separate cause of action hereunder, and separate suits may be brought hereunder as each cause of action arises. The Guarantors hereby agree that the Bonds issued under the Resolution and the Bond Purchase Agreement may make reference to this Agreement. The Guarantors hereby waive (a) notice of acceptance hereof, of any action taken or omitted in reliance hereon and of any defaults by the Issuer or the Company in the payment of any such sums, (b) any presentment, demand, notice or protest of any kind, and (c) any other act or thing or omission or delay to do any other act or thing which might in any manner or to any extent vary the risk of the Guarantors or which might otherwise operate as a discharge of the Guarantors. The Guarantors hereby further agree that the Resolution, the Bond Purchase Agreement, any Bond issued thereunder and the Lease may be modified, amended or supplemented in any manner as provided therein and no such modification, amendment or supplement or any renewal, extension or release shall release, affect or impair their joint and several liability under this Agreement.

2 Indemnification Against Invalidity. If, at any time and for any reason whatsoever, an Adjudication of Invalidity shall have been made, the Guarantors hereby promise to pay to the holders of the Bonds, upon written request therefor, an amount equal to the aggregate outstanding principal amount of the Bonds together with interest accrued thereon to the date of payment thereof, together with all amounts, if any, which may be payable pursuant to the Bond Purchase

Agreement. As used in this Section 2, "Adjudication of Invalidity" shall mean either (i) a final, unappealable adjudication by the Court of Appeals of the State of New York or by any other court of competent jurisdiction, binding upon the Company or the Issuer or, if not binding upon the Company or the Issuer, applicable to the Bonds in the opinion of nationally recognized bond counsel reasonably satisfactory to the Guarantors and to the holder of the Bonds at the time outstanding that, under the Constitution or general laws of the State of New York, the Issuer lacks the power or authority to do any one or both of the following: (a) issue the Bonds or (b) enter into the Bond Purchase Agreement, the Security Agreement, the Lease or the Assignment, or (ii) a final, unappealable adjudication by any such court that the Bonds are otherwise invalid for any other reason whatsoever, including, without limitation, any invalidity or irregularity in any statutory or other proceedings relating to the formation or existence of the Issuer, to the issuance of the Bonds or to the execution and delivery of the Bond Purchase Agreement, the Security Agreement, the Lease or the Assignment. In the event of an Adjudication of Invalidity and in addition to the foregoing, the Guarantors, jointly and severally, hereby agree to pay and to indemnify and save the holders of the Bonds harmless from and against any damage, loss, cost or expense (including attorneys' fees) which any such holder may incur or be subject to as a consequence, direct or indirect, of such Adjudication of Invalidity, including (1) all reasonable expenses resulting from the compromise or defense of any claims or liabilities arising as a result of any breach by the Company or the Issuer of any warranty, covenant, term or condition in, or the occurrence of any default under, this Agreement, the Bond Purchase Agreement, the Security Agreement, the Lease, the Assignment or the Bonds, and (2) any legal action commenced to challenge the validity of the above referred to agreements or instruments.

3 Character of Obligations Hereunder. The obligations of the Guarantors under Sections 1 and 2 of this Agreement are primary, absolute, independent, irrevocable and unconditional under any and all circumstances, and the right of the holders of the Bonds to enforce such obligations by any proceedings whether by action at law, suit in equity or otherwise shall not be impaired by any right, claim or defense (against the Company, the Issuer or any other Person) of any character whatsoever, including, without limitation, any right, claim or defense of rescission, recoupment, reduction, limitation, termination, setoff, counterclaim, waiver,

frustration, surrender, alteration or compromise. Without limiting the generality of the foregoing, such obligations of the Guarantors shall not be discharged, released or impaired or otherwise affected by: (i) any inability or failure on the part of the Company or the Issuer to perform or comply with the Bond Purchase Agreement, the Security Agreement, the Lease, the Assignment or the Bonds; (ii) any invalidity or irregularity in any statutory or other proceedings relating to the formation or existence of the Issuer, to the issuance of the Bonds or to the execution and delivery of the Bond Purchase Agreement, the Security Agreement, the Acceptance, the Lease or the Assignment; (iii) any impairment, modification, release, or limitation of the liability of the Company or the Issuer under the Bond Purchase Agreement, the Security Agreement, the Lease, the Assignment or the Bonds for any reason whatsoever, including, without limitation, any decision by any Federal or State court invalidating or otherwise affecting the obligations of the Company or the Issuer under or in connection with the Bond Purchase Agreement, the Security Agreement, the Lease, the Assignment or the Bonds; (iv) any bankruptcy, insolvency, moratorium, reorganization, arrangement, or the like, relating to the Issuer or the Company; (v) any waiver, consent, extension, indulgence or other action or inaction in respect of the Bond Purchase Agreement, the Security Agreement, the Acceptance, the Lease, the Assignment or the Bonds, including any modification, amendment and/or supplement to the foregoing, the renewal or extension of any Bond, or any other similar act; (vi) impossibility or illegality of performance on the part of the Issuer of any of its obligations under or in connection with the Bonds, the Security Agreement, the Lease, the Assignment or the Bond Purchase Agreement; (vii) force majeure; (viii) reason of non-completion or destruction, whether partial or complete, of the Project, whether on account of the abandonment thereof or otherwise, or the curtailment or cessation of the operation thereof or failure or inability of the Issuer or the Company to operate the Project; or (ix) any other circumstance, occurrence or condition, whether similar or dissimilar to any of the foregoing, that might be raised in avoidance of, or in defense against an action to enforce, the obligations of the Guarantors under the provisions hereof. The Guarantors acknowledge that this Agreement is executed for the benefit of the holders of the Bonds and that the Bonds will be purchased in reliance hereon. No act of commission or omission of any kind at any time on the part of the Bond Purchaser, its successors or assigns or any holder of a

Bond in respect of any matter whatsoever, shall in any way affect or impair the rights of any holder of a Bond to enforce any right, power or benefit of the holders of the Bonds under this Agreement.

The Guarantors specifically understand and agree that payment by the Company under any other agreement (whether voluntary or involuntary or pursuant to court order or otherwise) shall not under any circumstances or in any manner whatsoever constitute a defense to the Guarantors' several obligations hereunder except to the extent that all present and former holders of the Bonds have been indefeasibly paid in full.

Any conflict or ambiguity between this Agreement, the Lease, the Assignment, the Security Agreement and the Bond Purchase Agreement shall be interpreted and determined in the manner most favorable to the holders of the Bonds.

4 Warranties, Representations and Agreements of GWI.

GWI warrants, represents and agrees that:

4.1 Subsidiaries. Exhibit 1 hereto states (a) the name of each of GWI's Subsidiaries, its jurisdiction of incorporation, and the percentage of its Voting Stock owned by GWI and/or its Subsidiaries, and (b) the name of each of GWI's corporate and joint venture Affiliates (other than Subsidiaries) and the nature of the affiliation. GWI, and each Subsidiary, has good and marketable title to all of the shares it purports to own of the capital stock of each Subsidiary, free and clear in each case of any Lien. All such shares have been duly issued and are fully paid and nonassessable.

4.2 Corporate Organization and Authority. GWI, and each Subsidiary,

(a) is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation;

(b) is not in violation of any provision of its certificate of incorporation or its by-laws;

(c) has all requisite corporate power and authority and all necessary licenses and permits to own and

operate its Properties and to carry on its business as now conducted and as presently proposed to be conducted; and

(d) has duly qualified and is authorized to do business and is in good standing as a foreign corporation in each other jurisdiction where the character of its Properties or the nature of its activities make such qualification necessary.

4.3 Business and Property. The Audited 1979 Financial Statement (a) correctly describes the general nature of the business and principal Properties of GWI and its Subsidiaries and (b) together with the consolidated balance sheet of GWI and its consolidated subsidiaries as of September 30, 1980 and the related income and surplus statements for the nine months ended on such date, correctly lists all outstanding indebtedness for borrowed money (including all capitalized leases) of GWI and its Subsidiaries except the indebtedness incurred pursuant to (i) that certain Promissory Note of GWI Leasing Corporation to Marine Midland Bank, N.A., dated November 12, 1980, (ii) that certain Guaranty from GWI to Marine Midland Bank, N.A., dated November 12, 1980, (iii) that certain Promissory Note of GWI Leasing Corporation to Key Bank, N.A., dated January 19, 1981 and (iv) that certain Guaranty from GWI to Key Bank, N.A., dated January 19, 1981.

4.4 Financial Statements. (a) The consolidated balance sheets of GWI and its consolidated subsidiaries as of December 31 in the years 1978 and 1979 and the related consolidated income and surplus statements for the fiscal years ended on such dates, all accompanied by reports thereon containing opinions without qualification, except as therein noted, by Price Waterhouse & Co., independent certified public accountants, and the consolidated balance sheet of GWI and its consolidated subsidiaries as of September 30, 1980 and the related income and surplus statements for the nine months ended on such date, prepared by GWI, copies of each of which have been delivered to the Bond Purchaser, have been prepared in accordance with generally accepted accounting principles consistently applied, and, subject to year-end adjustments in the case of interim statements, present fairly the financial position of GWI and its consolidated subsidiaries as of such dates and the results of their operations for such periods. These consolidated financial statements include the accounts of all Subsidiaries of GWI for the respective periods during which a Subsidiary relationship existed.

(b) Since December 31, 1979, there has been no change in the business, prospects, profits, Properties or condition, financial or otherwise, of GWI or any of its Subsidiaries except changes in the ordinary course of business, none of which individually or in the aggregate has been materially adverse.

4.5 Full Disclosure. The financial statements referred to in Section 4.4 hereof do not, nor does this Agreement or any written statement furnished by or on behalf of GWI to the Bond Purchaser in connection with the negotiation of the sale of the Bonds or this Agreement, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained therein or herein not misleading. There is no fact which GWI has not disclosed to the Bond Purchaser in writing which materially adversely affects nor, so far as GWI can now foresee, will materially affect adversely the Properties, business, prospects, profits or condition (financial or otherwise) of GWI or any of its Subsidiaries or the ability of GWI to perform its obligations under this Agreement.

4.6 Pending Litigation. There are no proceedings pending, or to the knowledge of GWI threatened, against or affecting GWI or any Subsidiary in any court or before any governmental authority or arbitration board or tribunal which involve the possibility of materially adversely affecting the Properties, business, prospects, profits or condition (financial or otherwise) of GWI and its Subsidiaries, or the ability of GWI to perform and comply with this Agreement. Neither GWI nor any Subsidiary is in default with respect to any order of any court, governmental authority or arbitration board or tribunal.

4.7 Title to Properties. GWI, and each Subsidiary, has good and marketable title in fee simple (or its equivalent under applicable law) to all the real property, and has good title to all the other Property, it purports to own, including that reflected in the most recent balance sheet referred to in Section 4.4 (except as sold or otherwise disposed of in the ordinary course of business since the date of said balance sheet) free from Liens other than (i) Liens on Property of GWI Leasing Corporation, a Subsidiary of GWI, incurred in the ordinary course of its leasing business, (ii) the Liens on Property of GWI granted under that certain Guaranty Agreement from GWI to Marine Midland Bank, N.A., dated as of May 13, 1980, and that certain Guaranty from GWI to Marine Midland Bank, N.A., dated

November 12, 1980 and (iii) the Lien on Property of the Company set forth in Section 6.7 of the Bond Purchase Agreement.

4.8 Patents and Trademarks. Neither GWI nor any Subsidiary owns or possesses any patents, trademarks, service marks, trade names, copyrights, licenses, or rights with respect to the foregoing, and none of the foregoing is necessary for the present conduct of the business of GWI or any Subsidiary.

4.9 Agreement is Legal and Authorized. The execution, delivery and performance of this Agreement and compliance with all the provisions hereof and thereof by GWI:

(a) are within the corporate powers of GWI and have been duly authorized by all necessary corporate action on the part of GWI (no action of the stockholders of GWI being required by law, the certificate of incorporation or by-laws of GWI or otherwise); and

(b) are legal and will not conflict with or result in any violation or breach in any of the provisions of, or constitute a default under or result in the creation of any Lien upon any Property of GWI or any Subsidiary, except as contemplated in the Lease under the provisions of, any agreement, charter instrument, by-law or other instrument to which GWI or any Subsidiary is a party or by which any of them may be bound.

4.10 No Defaults. No event has occurred and no condition exists which, upon the issue of the Bonds, or thereupon with notice and/or passage of time, would constitute an Event of Default. Neither GWI nor any of its Subsidiaries is in default in any material respect under any term of its charter instruments or by-laws. Neither GWI nor any of its Subsidiaries is in default under any agreement under which indebtedness of GWI or any of its Subsidiaries is outstanding or under any other material agreement or instrument to which it is a party or by which it may be bound.

4.11 Governmental Consent. Neither the nature of GWI or of any Subsidiary, or of any of their respective businesses or Properties, nor any relationship between GWI or any Subsidiary and the Issuer or any other Person, nor any other circumstance in connection with the execution, delivery and performance of this Agreement, the Lease, the Assignment, the Security Agreement, the Acceptance and the

Bond Purchase Agreement or the offer, issue, sale or delivery of the Bonds is such as to require on the part of GWI a consent, approval or authorization of, or filing, registration or qualification with, any governmental authority other than the Issuer.

4.12 Taxes. (a) All tax returns required to have been filed by GWI or any Subsidiary in any jurisdiction have in fact been filed, and all taxes, assessments, fees and other governmental charges upon GWI or any Subsidiary, or upon any of their respective Properties, incomes or franchises, which are due and payable have been paid except as set forth in Section 6.11 of the Bond Purchase Agreement. Neither GWI nor any Subsidiary knows of any proposed material additional tax assessment against it.

(b) The provisions and reserves for taxes on the books of GWI, and each Subsidiary, are adequate for all open years, and for its current fiscal period. The amount of the reserve for Federal income taxes reflected in the consolidated balance sheet of GWI and its Subsidiaries as of December 31, 1979 is an adequate provision for such Federal income taxes, if any, as may be payable by GWI and its Subsidiaries for the fiscal years 1974 through 1979.

4.13 Compliance with Law. Neither GWI nor any Subsidiary:

(a) is in violation of any law, ordinance, governmental rule or regulation to which it is subject; or

(b) has failed to obtain any license, permit, franchise or other governmental authorization necessary to the ownership of its Property or to the conduct of its business,

which violation or failure to obtain might materially adversely affect the business, prospects, profits, Properties or condition (financial or otherwise) of GWI and its Subsidiaries or the ability of GWI to perform its obligations under this Agreement.

4.14 Restrictions on GWI and Subsidiaries. Neither GWI nor any Subsidiary is a party to any contract or agreement, or subject to any charter or other corporate restriction, which materially and adversely affects its business. Neither GWI nor any Subsidiary is a party to any contract or agreement which restricts the right or ability of GWI to

incur indebtedness for money borrowed, except that certain Loan and Security Agreement dated as of February 16, 1979 among GWI, GWI Leasing Corporation and The First National Bank of Boston. The incurring of the indebtedness represented by the Lease and by this Agreement will not violate any provision of such Loan and Security Agreement. Neither GWI nor any Subsidiary has agreed or consented to cause or permit in the future (upon the happening of a contingency or otherwise) any of its Property, whether now owned or hereafter acquired, to be subject to a Lien.

4.15 Use of Proceeds. The proceeds of the sale of the Bonds will be used solely for the payment of the costs incurred by the Company in the acquisition, improvement and equipping of the Project. None of the transactions contemplated in the Bond Purchase Agreement (including, without limitation thereof, the use of the proceeds from the sale of the Bonds) will violate or result in a violation of Section 7 of the Securities Exchange Act of 1934, as amended, or any regulations issued pursuant thereto, including, without limitation, Regulations G, T and X of the Board of Governors of the Federal Reserve System, 12 C.F.R., Chapter II. None of the proceeds from the sale of the Bonds will be used to purchase or carry (or refinance any borrowing the proceeds of which were used to purchase or carry) any "security" within the meaning of the Securities Exchange Act of 1934, as amended.

4.16 Private Offering. GWI has not offered any of the Bonds or any similar Security of the Issuer or GWI for sale to, or solicited offers to buy any thereof from, or otherwise approached or negotiated with respect thereto with, any prospective purchaser, other than the Bond Purchaser and no more than five (5) other institutional investors, each of which was offered the Bonds at private sale for investment. GWI agrees that neither it nor anyone acting on its behalf will offer the Bonds or any part thereof or any similar Securities for issue or sale to, or solicit any offer to acquire any of the same from, anyone so as to bring the issuance and sale of the Bonds within the provisions of Section 5 of the Securities Act of 1933, as amended.

4.17 ERISA. (a) The present value of all benefits vested under all "employee pension benefit plans", as such term is defined in Section 3 of the Employee Retirement Income Security Act of 1974, as amended (herein called "ERISA"), maintained by GWI and its Subsidiaries, as from time to time in effect (herein called the "Pension Plans"),

did not, as of December 31, 1979, the last annual valuation date, exceed the value of the assets of the Pension Plans allocable to such vested benefits by an amount greater than \$313,270 in the aggregate.

(b) Neither any of the Pension Plans nor any trusts created thereunder, nor any trustee or administrator thereof, has engaged in a "prohibited transaction", as such term is defined in Section 4975 of the Internal Revenue Code of 1954, as amended, which could subject the Pension Plans or any of them, any such trust, or any trustee or administrator thereof, or any party dealing with the Pension Plans or any such trust to the tax or penalty on prohibited transactions imposed by said Section 4975.

(c) Neither any of the Pension Plans nor any such trusts have been terminated, nor have there been any "reportable events", as that term is defined in Section 4043 of ERISA, since the effective date of ERISA except the termination, effective as of January 1, 1980, of the Genesee and Wyoming Railroad Company Supplemental Pension Plan for Non-Union Hourly Employees.

(d) Neither any of the Pension Plans nor any such trusts have incurred any "accumulated funding deficiency", as such term is defined in Section 302 of ERISA (whether or not waived), since the effective date of ERISA.

5 Covenants of GWI. GWI covenants and agrees that, from and after the date of execution of this Agreement and so long as any Bonds shall remain outstanding, it will comply with the following provisions:

5.1 Financial Statements; Reports; Notices; Certificates. (a) GWI will deliver to the Bond Purchaser and to each subsequent holder of Bonds at the time outstanding:

(1) as soon as practicable after the end of each of the first three quarterly fiscal periods in each fiscal year of GWI, and in any event within 45 days thereafter, duplicate copies of:

(i) consolidated and consolidating balance sheets of GWI and its consolidated subsidiaries as at the end of such quarter, and

(ii) consolidated and consolidating statements of income and surplus of GWI and its consolidated

subsidiaries for such quarter and (in the case of the second and third quarters) for the portion of the fiscal year ending with such quarter,

setting forth in each case in comparative form the figures for the corresponding periods in the previous fiscal year, all in reasonable detail and certified as complete and correct subject to changes resulting from year-end adjustments by a principal financial officer of GWI;

(2) As soon as practicable after the end of each fiscal year of GWI, and in any event within 120 days thereafter, duplicate copies of:

(i) consolidated and consolidating balance sheets of GWI and its consolidated subsidiaries as at the end of such year, and

(ii) consolidated and consolidating statements of income and surplus of GWI and its consolidated subsidiaries for such year,

setting forth in each case in comparative form the figures for the previous fiscal year, all in reasonable detail and accompanied by an opinion thereon of Price Waterhouse & Co. or other independent certified public accountants of recognized national standing selected by GWI, which opinion shall state that such financial statements fairly present the matters covered thereby in conformity with generally accepted accounting principles consistently applied (except for changes with which said accountants concur) and that the examination of such accountants in connection with such financial statements has been made in accordance with generally accepted auditing standards, and accordingly included such tests of the accounting records and such other auditing procedures as were considered necessary in the circumstances;

(3) immediately upon becoming aware of the existence of any condition or event which constitutes or with notice and/or the passage of time would constitute an Event of Default, a written notice specifying the nature and period of existence thereof and what action GWI is taking or proposes to take with respect thereto;

(4) immediately upon becoming aware that the holder of any Bond, or of any other evidence of indebtedness or other Security of GWI or any Subsidiary, has given notice or taken any other action with respect to a claimed default or event of default, a written notice specifying the notice given or action taken by such holder and the nature of the claimed default or event of default and what action GWI is taking or proposes to take with respect thereto; and

(5) with reasonable promptness, such other data and information as from time to time may be reasonably requested.

(b) Each set of financial statements delivered to the Bond Purchaser or any subsequent holder of a Bond pursuant to Section 5.1(a)(1) or 5.1(a)(2) will be accompanied by a certificate of the President or the Treasurer of GWI to the effect that the signer has reviewed the relevant terms of this Agreement, the Lease, the Assignment, the Security Agreement and the Bond Purchase Agreement, and has made, or caused to be made under his supervision, a review of the transactions and conditions of GWI and its Subsidiaries from the beginning of the accounting period covered by the income statements being delivered therewith to the date of the certificate and that such review has not disclosed the existence during such period of any condition or event which constitutes a Default or an Event of Default, or, if any such condition or event existed or exists, specifying the nature and period of existence thereof and what action GWI has taken or proposes to take with respect thereto.

(c) Each set of financial statements delivered pursuant to Section 5.1(a)(2) will be accompanied by a certificate of the accountants who certify such financial statements stating that they have reviewed this Agreement, the Bond Purchase Agreement, the Security Agreement, the Assignment and the Lease and stating further whether, in making their audit, such accountants have become aware of any condition or event which then constitutes or with notice and/or the passage of time would constitute an Event of Default and, if any such condition or event then exists, specifying the nature and period of existence thereof.

5.2 Prohibited Actions. Neither GWI nor any Subsidiary nor any Affiliate will, directly or indirectly, intentionally take or omit to take any action which could result in an Event of Default or which could result in an Event of

Taxability which action or omission to act is taken in order to redeem the Bonds at such time or at such price as would not otherwise be permitted for redemption of the Bonds under the Bond Purchase Agreement.

6 Amendment and Waiver.

6.1 Requirements. This Agreement may be amended, and the observance of any term of this Agreement may be waived, with (and only with) the written consent of the Guarantors and the holder of the Bonds at the time outstanding.

6.2 Binding Effect. Any such amendment or waiver shall be binding upon each future holder of the Bonds and upon the Guarantors whether or not such Bonds shall have been marked to indicate such amendment or waiver. No such amendment or waiver shall extend to or affect any obligation not expressly amended or waived or impair any right consequent thereon.

7 Severability. In case any one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be affected or impaired thereby.

8 Directly or Indirectly. Where any provision in this Agreement refers to action to be taken by any Person, or which such Person is prohibited from taking, such provision shall be applicable whether such action is taken directly or indirectly by such Person, including actions taken by or on behalf of any partnership in which such Person is a general partner.

9 Definitions. Unless otherwise defined herein, all capitalized terms shall have the meanings assigned to them in the Bond Purchase Agreement.

10 Notices. All notices, requests, consents and other communications hereunder shall be in writing and shall be delivered in person or mailed first-class, postage prepaid, to the Bond Purchaser, the Issuer, the Company, GWI or the holders of the Bonds at the respective addresses set forth or referred to in the Bond Purchase Agreement or at such other address as may have been furnished in writing to the aforementioned parties.

11 Survival. All warranties, representations, and covenants made by GWI herein and by the Company in the Bond

Purchase Agreement or in any certificate or other instrument delivered by either of them or on its behalf in connection with the sale of the Bonds shall be considered to have been relied upon by the Bond Purchaser and shall survive the delivery to the Bond Purchaser of the Bonds regardless of any investigation made by the Bond Purchaser or on its behalf. All statements of the Guarantors in any such certificate or other instrument shall constitute warranties and representations by the Guarantors hereunder.

12 Benefit of this Agreement. This Agreement is entered into by the Guarantors for the benefit of the holders from time to time of the Bonds, all of whom shall be entitled to enforce performance and observance of the provisions of this Agreement to the same extent as if they were parties signatory hereto. Nothing contained in this Agreement shall impair the right of any Bondholder to enforce payment of amounts due hereunder on account of the principal of, premium, if any, interest on, and any other amounts due with respect to the Bond or Bonds held by such holder, when due and payable, upon redemption or otherwise. The Guarantors hereby expressly waive notice from the holders from time to time of any of the Bonds of their acceptance and reliance on this Agreement. The Guarantors, jointly and severally, agree to pay all costs, expenses and fees, including all reasonable attorneys' fees, which may be incurred by any holder of any of the Bonds in enforcing or attempting to enforce this Agreement whether the same shall be enforced by suit or otherwise. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto, whether so expressed or not, and shall inure to the benefit of and be enforceable by the holder or holders at any time of any of the Bonds.

13 Reproduction of Documents. To the extent permitted by applicable law, this Agreement, the Security Agreement, the Lease, the Assignment, the Bond Purchase Agreement and all documents relating hereto and thereto, including, without limitation, (a) supplements, consents, waivers and modifications which may hereafter be executed, (b) documents received by the Bond Purchaser at the Closing of the purchase of Bonds (except the Bonds themselves) and (c) financial statements, certificates and other information previously or hereafter furnished to any holder, may be reproduced by any holder and any party hereto by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process, and any holder and any

party hereto may destroy any original document so reproduced. The Guarantors and the Bond Purchaser agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

14 Controlling Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

15 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

GENESEE AND WYOMING INDUSTRIES,
INC.

By _____
Title:

GENESEE AND WYOMING RAILROAD
COMPANY

By _____
Title:

CHEMICAL BANK

By _____
Title:

EXHIBIT 1
to
Guaranty and Indemnification Agreement

LIST OF SUBSIDIARIES AND AFFILIATES OF GWI

<u>Subsidiaries</u>	<u>Jurisdiction of Incorporation</u>	<u>Percentage of Voting Stock Owned</u>
Genesee and Wyoming Railroad Company	New York	100%
GWJ Leasing Corporation	Delaware	100%
GWJ Rail Management Corporation	Delaware	100%
GWJ Data Services, Inc.	New York	100%

<u>Affiliates</u>	<u>Jurisdiction of Incorporation</u>	<u>Nature of Affiliation</u>
<u>None.</u>		

EXHIBIT E
to
Bond Purchase Agreement

Specimen

(Form of Bond)

UNITED STATES OF AMERICA
STATE OF NEW YORK

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY
(Livingston County, New York)

1981 INDUSTRIAL DEVELOPMENT REVENUE BOND

(Genesee and Wyoming Railroad Company Facility)

No. R-_____

LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY, a public benefit corporation of the State of New York (hereinafter called the "Issuer"), acknowledges itself indebted and for value received promises to pay, solely from the source and as hereinafter provided, to _____, or registered assigns, the principal sum of _____ Dollars (\$_____) on the first day of January, 1996, unless redeemed prior thereto in accordance with the terms hereof, and to pay interest on the unpaid principal balance hereof from the date hereof at the rate of nine and three-quarters per centum (9.75%) per annum, payable on April 1, 1981 and on the first day of each July, October, January and April thereafter until the principal hereof is paid in full and, with respect to any overdue payment of principal and (to the extent legally enforceable) any overdue payment of interest, at a rate which shall exceed by one per centum (1%) the rate borne by this Bond as of the date such payment becomes overdue. From and after the occurrence of an Event of Taxability, as defined in the Bond Purchase Agreement (as defined below), this Bond shall bear interest at the rate of nineteen and one-half per centum (19.50%) per annum from the date of the occurrence of the Event of Taxability. Interest shall be computed on the basis of a 360-day year and the actual number of days elapsed.

Payment of the principal of, redemption premium, if any, and interest on this Bond shall be made, upon presentation and surrender hereof, at the office of the Issuer. Interest hereon shall be payable to the person in whose name this Bond is registered as of the close of business on the

date fifteen days prior to each quarterly interest payment date. The principal of, redemption premium, if any, and interest on this Bond are payable in lawful money of the United States of America which at the time of payment is legal tender for the payment of public and private debts; provided, however, that at the option of the Issuer interest hereon may be paid by check mailed to the person entitled thereto. As more fully set forth in Section 4.4 of the Bond Purchase Agreement, the Issuer may enter into an Agreement with the holder of this Bond providing for the making to such holder of all payments of principal of and premium, if any, and interest and any other amounts due on this Bond or any part hereof (other than any payment of the entire unpaid principal amount hereof) at a place and in a manner other than as hereinbefore provided without presentation or surrender of such Bond.

This Bond is one of a duly authorized issue of bonds limited in aggregate principal amount to One Million Dollars (\$1,000,000) (hereinafter called the "Bonds"), issued and authorized to be issued for the purposes (i) of financing the acquisition of two (2) General Motors EMD MP15DC diesel locomotives to be operated substantially within Livingston County, New York (hereinafter called the "Facility"), and leasing the same to Genesee and Wyoming Railroad Company, a New York corporation (hereinafter called the "Company"), under and pursuant to a lease agreement (hereinafter called the "Lease") dated as of January 1, 1981, by and between the Issuer and the Company, and (ii) of paying necessary expenses incidental to all thereof so as to promote the job opportunities, health, and the general prosperity and welfare of the inhabitants of the State of New York.

The Bonds are issued under a bond resolution duly adopted by the Issuer (hereinafter called the "Resolution") and a Bond Purchase Agreement dated as of January 1, 1981 among Chemical Bank, the initial purchaser of the Bonds (hereinafter called the "Bank"), the Issuer and the Company (herein called the "Bond Purchase Agreement"). The Bonds are equally and ratably secured and entitled to the security given by (1) a security agreement dated as of January 1, 1981 between the Issuer and the Bank (hereinafter called the "Security Agreement"), which, among other things, grants to the Bank and its successors and assigns a first lien on and a security interest in the Facility, and the Issuer's obligations under which have been accepted by the Company pursuant to an acceptance dated as of January 1, 1981 (hereinafter called the "Acceptance"), and (2) a pledge and assignment dated as of January 1, 1981 by the Issuer to the Bank

and its successors and assigns (hereinafter called the "Assignment") of certain of the rights and remedies of the Issuer under the Lease, including the right to collect and receive amounts payable thereunder. The Security Agreement, the Assignment, the Lease and the Bond Purchase Agreement are recorded in the office of the United States Interstate Commerce Commission. Pursuant to the Bond Purchase Agreement, the Company has agreed to make certain indemnification payments to the holders and former holders of the Bonds upon the occurrence of certain events affecting the exemption from federal income taxation of interest on the Bonds. Payment of the principal of, redemption premium, if any, interest on and all other amounts, if any, payable pursuant to the Bond Purchase Agreement in respect of the Bonds is unconditionally guaranteed by the Company and by Genesee and Wyoming Industries, Inc. (owner of all the issued and outstanding stock of the Company and organized under the laws of the State of Delaware) (hereinafter together called the "Guarantors"), pursuant to a guaranty and indemnification agreement dated as of January 1, 1981 between the Guarantors and the Bank (hereinafter called the "Guaranty"). Reference is hereby made to the Lease, the Guaranty, the Security Agreement, the Acceptance, the Assignment and the Bond Purchase Agreement and to all amendments and supplements thereto for the provisions, among others, with respect to the nature and extent of the security, the rights, duties and obligations of the Issuer and the holders and former holders of the Bonds and the terms upon which the Bonds are or may be issued and secured.

The Bonds are special obligations of the Issuer and are payable solely out of the revenues, receipts and other payments derived from leasing the Facility and as otherwise provided in the Resolution, the Bond Purchase Agreement, the Lease, the Guaranty, the Security Agreement and the Assignment. Payments pursuant to the Lease are required to be made by the Company directly to the then current holder of the Bonds in payment, on behalf of the Issuer, of the principal of, redemption premium, if any, and interest on the Bonds. This Bond is not and shall not be a debt of the State of New York or of Livingston County, New York, and neither the State of New York nor Livingston County, New York shall be liable hereon.

This Bond is fully negotiable and transferable as provided in the Bond Purchase Agreement, only upon books of the Issuer, by the registered owner hereof in person or by its

attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Issuer. Thereupon a new Bond, in registered form, in the same aggregate principal amount or, if this Bond has been partially prepaid as set forth below, in the aggregate principal amount remaining after the application of such partial prepayments, shall be issued to the transferee in exchange therefor as provided in the Bond Purchase Agreement.

The Issuer may deem and treat the person in whose name this Bond is registered as the absolute owner hereof, whether this Bond shall be overdue or not, for the purpose of receiving payment of the principal of, redemption premium, if any, and interest on this Bond and for all other purposes. All such payments so made to the registered owner shall be valid and effectual to satisfy and discharge the liability upon this Bond to the extent of the sum or sums so paid, and the Issuer shall not be affected by any notice to the contrary.

The Bonds are subject to redemption in whole (i) in the event of exercise by the Company of its option to terminate the Lease as provided in Section 11.1(a) of the Lease, or (ii) upon the occurrence of an Event of Taxability (as defined in the Bond Purchase Agreement). If called for redemption as provided in (i) above, the Bonds shall be subject to redemption as provided in Section 4.1(e) of the Bond Purchase Agreement at 100% of the unpaid principal amount thereof, plus accrued interest to the redemption date thereof. If called for redemption as provided in (ii) above, the Bonds shall be subject to redemption by the Issuer (upon direction by the Company) as a whole within 90 days after receipt by the Company of written notice of the occurrence of the Event of Taxability at a redemption price of 100% of the unpaid principal amount thereof, plus accrued interest to the redemption date thereof, and the Company shall be obligated to pay any amounts payable pursuant to the Bond Purchase Agreement as a result of the occurrence of the Event of Taxability.

The Bonds shall be redeemed prior to their maturity by payment of mandatory sinking fund installments in the amount of \$16,667.00 each, payable on the first day of April, 1981 and on the first day of each July, October, January and April thereafter to and including October 1, 1995 with a final installment in the amount of \$16,647.00 payable on

January 1, 1996. Such sinking fund installments shall be payable at a redemption price of 100% of the principal amount to be so redeemed, together with accrued interest to the redemption date.

The Bonds are subject to redemption on or after January 1, 1986, as a whole at any time (upon compliance with the requirements set forth in Sections 11.1(b) and 11.2 of the Lease) or in part on any interest payment date (upon payment by the Company of additional sums pursuant to Section 5.5 of the Lease), at the following prices expressed in percentages of the principal amount to be so redeemed, plus accrued interest on such principal amount to the redemption date thereof:

<u>Redemption Dates</u>	<u>Redemption Prices</u>
January 1, 1986 through December 31, 1986	109.75%
January 1, 1987 through December 31, 1987	108.775%
January 1, 1988 through December 31, 1988	107.8%
January 1, 1989 through December 31, 1989	106.825%
January 1, 1990 through December 31, 1990	105.85%
January 1, 1991 through December 31, 1991	104.875%
January 1, 1992 through December 31, 1992	103.9%
January 1, 1993 through December 31, 1993	102.925%
January 1, 1994 through December 31, 1994	101.95%
January 1, 1995 through December 31, 1995	100.975%

On any interest payment date, the Issuer may at the direction of the Company redeem an additional principal amount of the Bonds equal to the sinking fund installment due on such interest payment date (or any lesser amount in an even multiple of \$50,000) at a redemption price equal to the principal amount so redeemed plus accrued interest on such amount to such interest payment date; provided that the aggregate principal amount of the Bonds which may be redeemed pursuant to this paragraph shall not exceed \$200,000.

The principal amount of any partial redemption of the Bonds pursuant to paragraphs (b), (c) or (f) of Section 4.1 of the Bond Purchase Agreement shall be applied to reduce the sinking fund installments due on the Bonds in inverse chronological order of their due dates.

Pursuant to Section 8.5(d) of the Bond Purchase Agreement, the Company has agreed to purchase this Bond from the holder hereof, upon demand therefor, upon the occurrence of an Event of Taxability (as defined in the Bond Purchase Agreement), as provided in such Section.

In the event any portion of the Bonds is called for redemption as aforesaid (other than by payment of mandatory sinking fund installments), notice thereof will be given by mailing a copy of the redemption notice by first-class mail not less than thirty (30) nor more than forty-five (45) days prior to the date fixed for redemption to the registered owner of the Bonds, as provided in Section 4.2 of the Bond Purchase Agreement, at the address shown on the registration books.

On the specified redemption date, the principal amount of the Bonds called for redemption shall cease to bear interest and shall no longer be secured by the Security Agreement or the Assignment, provided funds for such redemption are on deposit at the place of payment at that time.

Modifications or alterations of the Lease, the Bond Purchase Agreement, the Guaranty, the Assignment and the Security Agreement may be made only to the extent and under the circumstances permitted by each thereof, respectively.

It is hereby certified, recited and declared that all acts, conditions and things required to exist, happen and be performed precedent to and in the execution, delivery and issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law; and that the issuance of this Bond and any other of the Bonds, together with all other obligations of the Issuer, does not exceed or violate any constitutional, statutory or corporate limitation.

IN WITNESS WHEREOF, LIVINGSTON COUNTY INDUSTRIAL DEVELOPMENT AGENCY has caused this Bond to be executed in its name by the manual or facsimile signature of its Chairman, its corporate seal or a facsimile thereof to be hereunto affixed, impressed, imprinted or otherwise reproduced hereon, and attested by the manual or facsimile signature of its Secretary.

Dated: *January 23, 1981*

LIVINGSTON COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By *Clinton D. Morris*
Chairman

(SEAL)

ATTEST:

J. Matthews
Secretary

(FORM OF ASSIGNMENT)

FOR VALUE RECEIVED the undersigned hereby sells, assigns and transfers unto _____

(Please print or typewrite name and address of transferee)

the within bond and all rights and title thereunder, and hereby irrevocably constitutes and appoints _____ attorney to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises.

Dated: _____

(FORM OF REDEMPTION TABLE)

TABLE OF PARTIAL REDEMPTION PAYMENTS

Upon any partial redemption of this Bond for which this Bond is surrendered to the Issuer, the Issuer shall make appropriate endorsements on this table. If this Bond is held by a bondholder which is receiving payments pursuant to Section 4.4 of the Bond Purchase Agreement, the holder hereof, by accepting this Bond, hereby agrees to make appropriate endorsements on this Bond indicating any partial redemption of the principal hereof prior to any transfer of this Bond. Any purchaser of this Bond should verify with the Issuer the validity of any such endorsements and the principal balance of the Bond outstanding prior to the purchase hereof.

<u>Date</u>	<u>Amount Paid</u>	<u>Remaining Principal Balance</u>	<u>Signature</u>
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EXHIBIT F
to
Bond Purchase Agreement

LIST OF AFFILIATES OF THE COMPANY

<u>Affiliates</u>	<u>Jurisdiction of Incorporation</u>	<u>Nature of Affiliation</u>
GWI Leasing Corporation	Delaware	Under common control
GWI Rail Management Corporation	Delaware	Under common control
GWI Data Services, Inc.	New York	Under common control
Genesse and Wyoming Industries, Inc.	Delaware	Parent

DESCRIPTION OF CLOSING OPINION OF
COUNSEL FOR THE COMPANY AND GWI

The closing opinion of Messrs. Harter, Secrest & Emery, counsel for the Company and GWI, which is called for by Section 7.1 of the Bond Purchase Agreement, shall be dated the Closing Date and addressed to the Purchaser, shall be satisfactory in form and substance to the Purchaser and its special counsel, and shall be to the effect that:

(1) GWI is a duly incorporated and validly existing corporation in good standing under the laws of the State of Delaware and has all requisite corporate power and authority to carry on its business and own its Property;

(2) each Subsidiary, including the Company, is a duly incorporated and validly existing corporation in good standing under the laws of its jurisdiction of incorporation and has all requisite corporate power and authority to carry on its business and own its Property;

(3) GWI is duly authorized to conduct its business and has duly qualified and is in good standing as a foreign corporation in each jurisdiction where the character of its Properties or the nature of its activities makes such qualification necessary;

(4) the Company is duly authorized to conduct its business and has duly qualified and is in good standing as a foreign corporation in each jurisdiction where the character of its Properties or the nature of its activities makes such qualification necessary;

(5) the Lease, the Acceptance, the Guaranty and the Bond Purchase Agreement have been duly authorized by all necessary corporate action on the part of the Company (no action by the stockholders of the Company being required by law, by the Certificate of Incorporation or By-Laws of the Company or otherwise), have been duly executed and delivered by the Company, are the legal, valid and binding obligations of the Company and are enforceable in accordance with their terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally;

(6) the forms of the Security Agreement and the Assignment have been approved by all necessary corporate action on

the part of the Company (no action of the stockholders of the Company being required by law, the Certificate of Incorporation or By-Laws of the Company or otherwise).

(7) the Guaranty has been duly authorized by all necessary corporate action on the part of GWI (no action by the stockholders of GWI being required by law, by the Certificate of Incorporation or By-Laws of GWI or otherwise), has been duly executed and delivered by GWI, is the legal, valid and binding obligation of GWI and is enforceable in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally;

(8) the forms of the Lease, the Bond Purchase Agreement, the Security Agreement, the Acceptance and the Assignment have been approved by all necessary corporate action on the part of GWI (no action of the stockholders of GWI being required by law, by the Certificate of Incorporation or By-Laws of GWI or otherwise);

(9) the execution and delivery of the Lease, the Acceptance, the Guaranty and the Bond Purchase Agreement and compliance by the Company with the provisions of each thereof are legal and will not conflict with, or result in any violation or breach of any of the provisions of, or constitute a default under or result in the creation or imposition of any Lien or encumbrance upon any of the Property of the Company (except as contemplated in the Lease) pursuant to the provisions of the Certificate of Incorporation or By-Laws of the Company or any agreement or other instrument to which the Company is a party or by which it is bound, or of any license, judgment, decree, order, law, statute, ordinance or governmental rule or regulation applicable to the Company;

(10) the execution and delivery of the Guaranty and compliance by GWI with the provisions thereof are legal and will not conflict with, nor result in any violation or breach of any of the provisions of, or constitute a default under or result in the creation or imposition of any Lien or encumbrance upon any of the Property of GWI or any Subsidiary (other than the Company in the manner and to the extent contemplated in the Lease) pursuant to the provisions of the Certificate of Incorporation or By-Laws of GWI or any agreement or other instrument to which GWI or any Subsidiary

is a party or by which any of them is bound, or of any license, judgment, decree, order, law, statute, ordinance or governmental rule or regulation applicable to GWI or any Subsidiary;

(11) GWI has good and marketable title to all of the shares it purports to own of the capital stock of each Subsidiary, free and clear in each case of any Lien and all such shares have been duly issued and are fully paid and nonassessable;

(12) all consents, approvals or authorizations, if any, of any governmental authority required on the part of the Company or GWI in connection with the execution and delivery of the Lease, the Security Agreement, the Acceptance, the Assignment, the Guaranty and the Bond Purchase Agreement have been duly obtained, including, without limitation, the approval of the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11301, and the Company and GWI have complied with any applicable provisions of law requiring any designation, declaration, filing, registration and/or qualification with any governmental authority in connection with such execution and delivery;

(13) there are no proceedings pending, or to the knowledge of such counsel threatened, against or affecting GWI or any Subsidiary in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially adversely affecting the transactions contemplated by the Bond Purchase Agreement or the validity or enforceability of the Bonds, the Bond Purchase Agreement, the Security Agreement, the Acceptance, the Assignment, the Lease, the Guaranty or any agreement or instrument to which the Company or GWI is a party used or contemplated for use in the consummation of the transactions contemplated by the Bond Purchase Agreement;

(14) the Company has vested the Issuer with good and marketable title to the property included in the Project under New York law, free from all Liens not permitted by the Security Agreement; and

(15) the Security Agreement, the Acceptance, the Lease, the Assignment and the Bond Purchase Agreement have been duly filed for record or recorded with the Interstate Commerce Commission pursuant to 49 U.S.C. Section 11303, and Uniform Commercial Code financing statements have been duly

filed with respect to the personal property referred to in the Security Agreement and the Assignment in the office of the Clerk of Livingston County, New York and the office of the Department of State of the State of New York, being all recordations and filings appropriate or required by the law of the State of New York and of the United States in order fully to protect the Issuer's title to the Project in the United States and in order fully to perfect, preserve and protect the Liens of the Security Agreement and the Assignment with respect to the property referred to therein, and all taxes and recording and filing fees required to be paid by the law of the United States and of the State of New York in respect of the execution, recording and filing of the Bond Purchase Agreement, the Lease, the Security Agreement and the Assignment and such financing statements have been paid, and no rerecording or refiling is required by the law of the United States or of the State of New York to preserve and protect the Liens of the Security Agreement and the Assignment except for Uniform Commercial Code continuation statements which are not presently required to be filed.

Such opinion shall also cover such other matters incident to the transactions contemplated hereby as the Purchaser or its special counsel may reasonably request.

EXHIBIT H
to
Bond Purchase Agreement

DESCRIPTION OF CLOSING OPINION
OF BOND COUNSEL

The closing opinion of Messrs. Willkie, Farr & Gallagher, bond counsel, which is called for by Section 7.1 of the Bond Purchase Agreement, shall be dated the Closing Date and addressed to the Purchaser, shall be satisfactory in form and substance to the Purchaser and its special counsel and shall cover the matters referred to in paragraphs 1, 2, 3 and 6 of Exhibit I.

Such opinion shall also state that (i) under statutes, regulations and rulings and court decisions existing on the date of such opinion, interest on the Bonds is exempt from all present Federal income taxes, except that Section 103(b) (9) of the Internal Revenue Code of 1954, as amended (the "Code"), provides that interest on any Bond shall not be exempt for any period during which it is held by a person who is a "substantial user" of the Project or a "related person" within the meaning of such section, and no opinion is expressed with respect to the taxability of interest on a Bond under such circumstances, and (ii) the Bonds, the Security Agreement, the Lease, the Bond Purchase Agreement and the Guaranty constitute exempted securities under Section 3(a) (2) of the Securities Act of 1933, as amended, and the offer, issuance, sale and delivery of the Bonds do not require registration of the Bonds, the Security Agreement, the Lease, the Bond Purchase Agreement or the Guaranty under said Securities Act of 1933, or compliance with any requirement of the Trust Indenture Act of 1939, as amended.

Such opinion shall also state that, based on due investigation and inquiry, the closing opinion of counsel for the Issuer delivered pursuant to Section 7.1 of the Bond Purchase Agreement is satisfactory in scope, form and substance to bond counsel and that in their opinion the Purchaser is justified in relying thereon, and shall also cover such other matters incident to the transactions contemplated hereby as the Purchaser or its special counsel may reasonably request.

Such opinion may state that counsel is not passing upon the title of the Issuer to any of the property included in the Project, the accuracy of the description of such property for the purposes of the Bond Purchase Agreement, the Security Agreement or the Assignment, the ranking of the liens of the Security Agreement or the Assignment or any filing or recording requirements with respect to the Bond Purchase Agreement, the Security Agreement, the Assignment or the Lease.

EXHIBIT I
to
Bond Purchase Agreement

DESCRIPTION OF CLOSING OPINION
OF COUNSEL TO THE ISSUER

The closing opinion of counsel for the Issuer, which is called for by Section 7.1 of the Bond Purchase Agreement, shall be dated the Closing Date and addressed to the Purchaser, shall be satisfactory in form and substance to the Purchaser and its special counsel and shall be to the effect that:

(1) the Issuer is a public corporation created under the Act, and has all requisite power and authority under the Act (i) to issue the Bonds, (ii) to use the proceeds thereof to finance the acquisition, improvement and equipping of the Project, (iii) to improve, maintain, own and dispose of the Project, and (iv) to enter into the Bond Purchase Agreement, the Security Agreement, the Assignment and the Lease;

(2) the Bond Purchase Agreement, the Security Agreement, the Assignment and the Lease have been duly authorized by all necessary corporate action on the part of the Issuer, have been duly executed and delivered by the Issuer, and constitute legal, valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally;

(3) the Bond being delivered to the Purchaser at the Closing has been duly authorized by all necessary action on the part of the Issuer, has been duly executed and delivered by the Issuer, and is the legal, valid and binding obligation of the Issuer, entitled to the benefits and security of the Security Agreement, the Assignment and the Lease in accordance with the terms of the Security Agreement, the Assignment, the Lease and the Bonds, and is enforceable against the Issuer in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally;

(4) the sale of the Bonds and the execution and delivery of the Bond Purchase Agreement, the Security Agreement, the Assignment and the Lease and the compliance by the Issuer with the provisions of each thereof are legal and will not conflict with, or result in any violation or breach of any of the provisions of, or constitute a default under

or result in the creation of any Lien or encumbrance (other than liens or encumbrances created by the provisions of the Security Agreement and the Assignment) upon any property of the Issuer under the provisions of any charter instrument, by-law or other instrument or agreement to which the Issuer is a party or by which it is bound, or of any license, judgment, decree, order, law, statute, ordinance or governmental rule or regulation applicable to the Issuer;

(5) the Issuer is not in default under any agreement, charter instrument, by-law or other instrument to which it is a party or by which it may be bound;

(6) all consents, judgments, approvals or authorizations and orders of, or filing, registration, or qualification with, any governmental or regulatory authority required on the part of the Issuer in connection with the execution and delivery of the Bond Purchase Agreement, the Security Agreement, the Assignment, the Lease or the offer, issue, sale or delivery of the Bonds have been performed or obtained, and are in full force and effect;

(7) the operation of the Project in the manner contemplated by the Lease will not be in conflict with any zoning, planning or similar regulation applicable thereto;

(8) all of the Issuer's right, title and interest in the Project and under the Lease have been duly and validly assigned, mortgaged and pledged under the Security Agreement and the Assignment, the Security Agreement creates, as security for the Bonds, a valid first lien upon the Project, and the Assignment creates, as security for the Bonds, a valid first security interest in all right, title and interest of the Issuer in the Lease including, without limitation, all payments, revenues or receipts now or in the future receivable by the Issuer thereunder;

(9) Uniform Commercial Code financing statements have been duly filed with respect to the personal property referred to in the Security Agreement and the Assignment in the following offices in the State of New York: the office of the Clerk of Livingston County and the office of the Department of State, being all recordations and filings appropriate or required by the law of the State of New York in order fully to perfect, preserve and protect the Liens of the Security Agreement and the Assignment with respect to the Property referred to therein, and all taxes and filing fees required to be paid by the law of the State of New York

in respect of the execution of the Bond Purchase Agreement, the Lease, the Security Agreement, the Acceptance and the Assignment and the filing of such financing statements have been paid, and no refiling is required by the law of the State of New York to preserve and protect the Liens of the Security Agreement and the Assignment except for Uniform Commercial Code continuation statements which are not presently required to be filed; and

(10) there are no proceedings pending, or to the knowledge of such counsel threatened, against or affecting the Issuer in any court or before any governmental authority or arbitration board or tribunal, which involve the possibility of materially adversely affecting the transactions contemplated by the Bond Purchase Agreement or the validity or enforceability of the Bonds, the Bond Purchase Agreement, the Lease, the Security Agreement, the Assignment or any agreement or instrument to which the Issuer is a party and which is used or contemplated for use in the consummation of the transactions contemplated by the Bond Purchase Agreement.

Such opinion shall also cover such other matters incident to the transactions contemplated hereby as the Purchaser or its special counsel may reasonably request.